

BUILDING THE NEW EUROPE: SOFT SECURITY AND ORGANISED CRIME
IN EU ENLARGEMENT

KATERINA GACHEVSKA, MA

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ABSTRACT

This thesis examines the policy and politics of the fight against organised crime in the process of the European Union's enlargement to Eastern Europe and the Balkans. It covers the period between the end of the Cold War in 1989 and the second Eastern enlargement in 2007 which saw the emergence of a new normative base for international relations and the expansion of the international security agenda focusing on 'soft security' issues and threats from weak rather than powerful states. The thesis explores this new 'soft security' thinking and investigates its practical application in EU's policy of building member-states in the New Europe with a focus on the case study of the fight against organised crime in Bulgaria and its EU-guided criminal justice reform. The thesis looks at these developments from both internal and external perspective and focuses on the practicalities of the policy itself such as the development of legislative changes, institutional reform and direct transfer of Western European expertise to Bulgarian institutions. The main findings of the thesis have led to a conclusion which questions the quality and premises of these policies. The thesis argues that the Bulgarian state and the European Union institutions have subscribed to a highly problematic organised crime discourse and agenda which has negatively influenced the quality of their relationship with the Bulgarian electorate.

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Chapter 1. Introduction and methodology

1.1. Introduction

This thesis examines the emergence of a new ‘soft security’ agenda in international politics and the way in which it was adopted and applied by the European Union in its attempt to deal with organised crime in the Balkans. The thesis uses the case study of the preparations of one Balkan country, Bulgaria, for joining the European Union and its policy in fighting organised crime developed under EU membership conditionality in order to analyse the application of such conditionality in the area of crime. The complexity of issues and approaches, which this topic entails, created the need for an inter-disciplinary analysis and the use of a combination of methods, the selection of which is the subject of this introductory chapter. The chapter’s aim is to explain in more detail the questions that led to the research design developed by the thesis, and the significance and purpose of the thesis itself. It discusses the existing approaches to the topic and justifies the choice of a particular approach in relation to its advantages and disadvantages.

Today there is a widespread perception, enhanced by official, academic, fictional and semi-fictional and media accounts, that crime and especially entrepreneurial organised crime has been on the rise in both developing and developed countries, and it has acquired elaborate forms of existence and ways of extracting of profit on a local to a global scale. Even though, as this thesis will further discuss, official statistics do not, and are unable, to reflect this perception, the public assumes that there is a growing problem with organised criminality and the policy responses to this newly identified threat have been multiplying and broadening. They have ranged from attempts at defining and distinguishing organised crime from other social problems, determining the extent to which it poses a threat to society and even international security, the adoption of new forms of policing, and other forms of control and prevention, and the spread of these functionally to more policy areas and territoriality beyond the nation state.

One of the areas for the regulation of crime which has been recently prioritised is in the arena of international relations. What is so peculiar about the case of the international level of dealing with organised crime, which has developed since the 1990s, is not so much that the issue became a part of the international agenda, criminal activities have always been part of inter-state relations, but the fact that it has attracted an unprecedented level of support as a problem to be urgently addressed by collaborative international policies and institutions. For example, the way the European Union has appropriated international policy on organised crime and begun establishing supranational policing institutions is indicative of new trends in international relations, criminal justice and politics in general. This enthusiasm for an international anti-crime regime and the increased export-import of anti-crime policies between the more experienced Western-European states and the Eastern states that are reforming their criminal justice systems is what this thesis sets out to investigate.

The thesis aims to explain how this shift has occurred in international policy: the specific policy concepts at the level of the European Union and what the new international policies have achieved on the ground. Bulgaria provides an opportunity to 'look closer', or to use Hobbs' phrase 'go down the glocal' of international organised crime regulation.¹ Bulgaria allegedly acquired a serious crime problem during its transition from communism to a democratic and market economy and was perceived to need to 'catch up' with the West economically and politically for which it internalised the new anti-crime and anti-corruption agenda in its preparation for EU membership. Furthermore, it had to fulfil a number of requirements in order to become part of the Union's 'area of freedom, security and justice'. In Bulgaria's case two aspects of policy making came into play – that of external compliance to EU requirements as a way into international recognition, and the need for the ruling elites to re-connect with the public while engaging in an unpopular structural reform. These circumstances make Bulgaria a useful case study of the politics of crime fighting which can be traced from the global to the local level.²

¹ D. Hobbs, 'Going Down the Glocal: The Local Context of Organised Crime', *The Howard Journal*, vol. 37, no. 4, November 1998, pp. 407-422.

² Other organisations and institutions have also had a role in this such as the UN (which had a drugs programme in Bulgaria), bilateral programmes between other EU member states (i.e. UK SOCA) and even the USAID. The thesis concentrates on the EU because of its major role and the fact that some of these programs were seen as assisting the EU agenda.

1.2. Background: organised crime, states and politics

Organised crime is a subjective term, and whatever term is used to describe such crime it is certainly not a new phenomenon. Pre-planned crime, involving several persons, often as a full time occupation, has had many manifestations in history although they might not always be described as ‘organised crime’. Some of the historical precedents have occurred within states and many have acted across state boundaries – indeed organised crime pre-dates the concept of ‘state’ borders. What is common to all cases is both the uneasy relationship of crime and criminality with political and economic power but also the uneasy link between myth and reality. From today’s perspective one can define as organised crime the case of Robin Hood and his band, or the ancient and medieval pirates and smugglers, the nineteenth century semi-legitimate British and American traders-smugglers of opium into China, the many historical secret societies and heresies, the Templars, the Sicilian Mafia, the criminal businesses which flourished during the Prohibition in America, and many others.³

The region of the Balkans has also had many historical precedents where ‘organised crime’ crossed with anti-establishment insurgency.⁴ In the period before the Ottoman conquest of the region, it had become infamous in Europe as a source of religious sects which emerged as an opposition to local states and clergy but ‘spread into’ Western Europe and were perceived as a threat to the Catholic church.⁵ Later the

³ The crusaders could be included in this category as well as armies – the early methods of recruiting armies involved promises of ‘loot’ in exchange for taking up arms. Further back in ancient times, farmer communities were often held up by nomadic tribes: at first forcefully but later by consent when the nomads created (imposed) rules and provided protection of farmer from other predators. This was the mechanism of the establishment of primitive states. In the case of Bulgaria such extortion-to-rules relationship was established around 681 between the Bulgars, or proto-Bulgarians – nomad tribes moving West from the Asia, and the Slavs, which were the local farmer inhabitant in the Balkans, living in numerous local tribes.

⁴ S. Xenakis, ‘The Challenge of Organised Crime to State Sovereignty in the Balkans: An Historical Approach’, Kokkalis Program on Southeastern and East-central Europe, Harvard University, 2001 [online] http://www.ksg.harvard.edu/kokkalis/GSW3/Sappho_Xenakis.pdf accessed 20/03/2004.

⁵ One of the most popular sects originated from Bulgaria. It was called Bogomilism, and was allegedly started by a priest Bogomil, and had emerged in Bulgaria between 927 and 970. It later spread in into Byzantine Empire, Russia, Serbia, Bosnia, Croatia, Italy and France. The reports of the Bogomils by the Catholic church spread the fear of the sect throughout Europe, and especially the allegations that the Bogomils were practicing sodomy. Allegedly these have influenced the emergence of the name of a crime in England. The etymology of the word ‘bugger’ and ‘buggery’ is linked to the French ‘bougre’ which originated from the word for Bulgarian ‘Bulgar’ which at the time was equated with the Bogomils, or sodomists. The word ‘Bulgarian’ has later evolved into a euphemism for sexual minorities, and particularly ‘gay’ people before accepting the specific terms used today. See K. Curtin,

decay of the Ottoman empire and its growing inability to control its vast territories, and especially the Christian dominated Balkans, also led to the spread of bandit gangs, called *hajduks*, in the mountainous regions which preyed on travellers, Ottoman representatives and local wealthy merchants.⁶ They were later turned into myths of the nation-building process of post-Ottoman independent republics in the Balkans, and the *hajduks* were seen not as criminals but part of an imagined large network of freedom fighters against ‘Ottoman yoke’ and an early sign of the existence of a national consciousness amongst the Christian population of the empire. But as Xenakis points out in her historical study of the organised crime threat in the Balkans: ‘The question of bias in historical writing becomes important when attempting to assess the legacies of competition for loyalty of populations between states and groups which one can identify as part of the tradition of organised crime.’⁷ The Balkan bandits and *hajduks*, she argues, were often acting in cooperation with the Ottoman state and ‘were at times granted legal dispensation by the Ottoman state to continue with these activities’ but at other places and cases did evolve into revolutionary movements.⁸

We can always call them Bulgarians. The emergence of lesbian and gay men on the American stage, Alyson Publications, 1988.

⁶ Eric J. Hobsbawm includes the *hajduks* in his study of historical cases of social banditry, which also covers the mafia in Sicily. His view of the ‘social bandits’ (such as Robin Hood) was based on the political aspect of banditry, i.e. ‘social bandits’ were men who gained fame and popular adulation as champions of the interests of the folk masses against elite oppression but also as a channel for upward social mobility. His view has been influential in criminological and sociological studies of crime and politics but also critiqued for basing its interpretation on myths and folklore, and not the social reality of crime. Other critiques point out the lack of hard data on many of the stories about the ‘social bandits’. E. Hobsbawm, *Primitive Rebels: Studies in Archaic Forms of Social Movement in the 19th and 20th Centuries*, Manchester University Press, 1971; E. Hobsbawm, *Bandits*, London: Weidenfeld & Nicolson, 1969; E. Hobsbawm, ‘Social Bandits: Reply’, *Comparative Studies in Society and History*, vol. 14, no. 4, Sep. 1972, pp. 503-505; R. Slatta, ‘Eric J. Hobsbawm’s Social Bandit: A Critique and Revision’ [online] http://www.ncsu.edu/project/acontracorriente/spring_04/Slatta.pdf accessed 20/02/2009.

⁷ S. Xenakis, 2001, *op.cit.*

⁸ One of these cases is the link that Ottoman state established to exist between smugglers and the Macedonian independence movements and led to the establishment of visa regulated travel in the country by 1902. *Ibid.* The involvement of Macedonians in the illegal arms and drugs business was later a problem for the Bulgarian state, when some individuals immigrated to Bulgaria and continued their illegal practices largely due to lack of possibilities for upward social mobility for them in small-landowning state of Bulgaria, and continued engagement with illegal markets in Macedonia. In fact all Balkan states faced the problem of how to treat the former bandits-turned-rebels after independence when many continued to be cause problems. The Greek state used them in its army which it employed to fight for territorial expansion. As Xenakis points out, it was bandits rather than regular Greek troops that were shipped out en masse by Greece to help the insurgents of Crete in the late 1860s’. *Ibid.*

The problematic link between the *criminal* and the *political*, and the question of what constitutes crime, what constitutes legitimate economic activity and, what is quasi-political resistance to the established unjust order is one of the reasons why organised crime has been an uneasy issue in inter-state relations. In reality, the relationship between those who commit crime and the established order is not always adversarial. Moreover it may not involve the state as the ‘good’ against the criminal as the ‘bad’, ‘crime’ may be competitive if it can be seen to exist in competition with a rival *kleptocratic* government.⁹ Criminals have also been used by governments in pursuit of political goals, or have been defended by governments, and in such cases the relationship is symbiotic.¹⁰ When existing without a direct relation to state power, organised crime could be interpreted as mirroring higher levels of conduct. Any established fact of organised crime could be interpreted as part of a hierarchical structure of criminal activities, which goes right to the top of the establishment, as pointed out by Tilly in his essay on ‘War Making and State Making as Organised Crime.’¹¹

In the area of international relations, anti-crime actions have sometimes resembled aggression and war, rather than cooperation against crime. Some examples include the mid-nineteenth century Opium Wars between the British Empire and China to defend free trade in drugs, the 1960s War on Drugs which the USA extended militarily into Latin America to stop free trade in drugs, or the more recent so-called ‘War on Terror’ waged by the US military in Afghanistan backed also by NATO particularly Britain. Behind this open confrontation, there is a history of antagonisms between states caused by crime related issues.¹² Apart from traditional smuggling or piracy supported by state governments (or sovereign monarchies), many of those antagonisms have been caused by the spread of the illegal drug trade since the 1960s,

⁹ H. Grossman, ‘Rival kleptocrats: the mafia versus the state’ in G. Fiorentini & S. Peltzman eds., *The Economics of Organised Crime* Cambridge University Press, 1997, pp. 143-161. Green and Ward also point out that ‘organised crime’ in such cases may offer a better redistribution of resources than the state. P. Green & T. Ward, *State Crime. Governments, Violence and Corruption*, Pluto Press, 2004.

¹⁰ Gallant for example argues that organised crime has not developed in opposition to the state but has been instrumental in state development. T. W. Gallant, ‘Brigandage, Piracy, Capitalism, and State-Formation: Transnational Crime from a Historical World Systems Perspective’ in J.M.C. Heyman. ed., *States and Illegal Practices*, Berg: Oxford, 1999, p. 25-62.

¹¹ C. Tilly, ‘War making and state making as organised crime’ in P.B. Evans, D. Rueschmeyer & T. Skocpol eds., *Bringing The State Back In*, Cambridge: Cambridge University Press, 1985.

¹² A. Burger, ‘Conundrum: Illicit narcotics and theoretical approaches in international politics’ in Conference proceedings: International Studies Association 40th Annual Convention, Washington, D. C., 16-20 February, 1999 [online] www.ciaonet.org/isa/ accessed 17/03/2002.

following on from the twentieth century criminalisation of the buying and selling and international movement of some drugs.¹³ A more recent example in this respect is the tension between the Netherlands and France due to the formers adoption of a more relaxed drug regime while opening borders with France.¹⁴ However, there has always been an unofficial cooperation between states' law enforcement institutions and a history of problematic but nevertheless developing structures of criminal justice collaboration on an international level, which have had some formal arrangements such as an international system of extraditions, international institutions such as Interpol, and some agreements regulating the production and trade of narcotics, aircraft hijacking, piracy, and others.¹⁵

In terms of legal regulation however, crime is still bounded by its territorial limits and the jurisdiction of the criminal justice system within which it had taken place. For example, if immigrants commit crimes in the host country, their country of origin is not usually held responsible for these acts.¹⁶ Crime happens in a context and the external origin of the perpetrator or the tool of crime can only play a role in a political framework when one country transfers responsibility to another for its crime

¹³ There is a century old history of international regulation of drugs – from regulation of the production of drugs for legal use through imposing quotas on opium production on the producer countries, to imposing regulation and criminalisation of the illegal production of drugs. The initiator of this regime building, USA, managed to convey the idea through the United Nations but some form of wide recognition was only achieved as late as the beginning of 1960s. Simultaneously, terrorism attained the consideration and 1963 saw the adoption of The Convention on Offences and Certain Other Acts Committed On Board Aircraft. The period since the adoption of those resolutions until the end of the Cold War was marked by limited and case-driven international actions dealing with international crimes: mostly legal (but not entirely legally binding) with the exception of the functional (mainly for information exchange) Interpol and the consultative Trevi Group within the EC. Prior to 1990s there was no mention in the priorities of the international community of actions against transnational organised crime.

¹⁴ Some of these problems are described by the series of publications of the World's Geopolitics of Drugs published by the Observatoire Geopolitique Des Drogues – Geopolitical Drug Watch. For example, Geopolitical Drug Watch, 'A drug trade primer for the late 1990s', *Current History*, April, 1998, pp. 150-153.

¹⁵ These regulations have some perverse consequences for the Balkans. The attempts to develop an international anti-drug regime, which began in the first decades of the twentieth century and was led by the rising power of the USA, led to the establishment of strict international regulation and quotas in the legal production of narcotics (and mainly opium). However, this regulation also boosted the development of an illegal production and in 1920-1930s Turkey became an ideal location for such production as the Western states had started to enforce an anti-drug regime but failed to control the increasing demand. The policy of the Turkish government to clamp down on the illegal trade resulted in the latter moving to Bulgaria in the 1930s. Subsequently the Balkan region was to become one of the main routes for land transportation of opium, and later morphine and opium. Xenakis, 2001, *op.cit.*

¹⁶ Though there are examples of collective responsibility being applied such as 9/11 and the subsequent invasion of Afghanistan.

problem.¹⁷ This has further inhibited the development of cooperation between states in the criminal justice area. When it comes to the international level, crime transcends the area of state criminal justice, which defines it as crime, and moves to the political area of international legal equality, guaranteed by the concept of state sovereignty, and lack of binding international criminal law and a lack of crime thereof.¹⁸

Given all these constraints, it is perhaps surprising that in the 1990s organised crime came to become so prominent in the international agenda and that this led to some remarkable developments in building a cooperative anti-crime regime and some viable international anti-crime institutions. However, an essential aspect of these policies was the way the problem was defined which facilitated international cooperation. Organised crime was defined as a common enemy of states rather than an enemy emanating from states.¹⁹ This new collective security vision was conditioned by the development of new theories which sought to expand the security agenda beyond the rigid military definition and thus opened up a possibility for more

¹⁷ One grey area of international crime is cybercrime as perpetrator and victim are often in different countries.

¹⁸ However, there is an increasing 'criminalisation' of states and state officials in the international relations discourse and developing international legal arrangements (i.e. International Criminal Court). As Kissinger points out in relation to the concept of universal jurisdiction, the latter is relatively new term and the closest analogous concept before 1990 is *hostes humani generis* ('enemies of the human race'). This term has been applied to outlaws whose crimes were committed outside the territory of a state such as pirates, hijackers, etc. In the 1990s, however, 'the notion that heads of state and senior public officials should have the same standing as outlaws before the bar of justice' is becoming increasingly popular. H. Kissinger, 'The Pitfalls of Universal Jurisdiction', *Foreign Affairs*, July/August 2001, vol. 80, no. 4, pp.86-96. The first case of issuing an arrest warrant against a sitting head of state, the Sudanese Omar Hassan Al-Bashir, was issued by the newly established International Criminal Court in 2009. Sudanese lawyers have declared the warrant illegal and against the international law – a position shared by many developing countries' leaders. D. Howden, 'Sudanese leader defies arrest warrant with trip to Eritrea. Pursued by International Criminal Court, Bashir tests support among Arab nations', *The Independent* (UK) Tuesday, 24 March 2009 [online] <http://www.independent.co.uk/news/world/africa/sudanese-leader-defies-arrest-warrant-with-trip-to-eritrea-1652608.html> accessed 02/04/2009.

¹⁹ These new developments also made 'transnational organised crime' distinct from the existing UN crime prevention initiative within the United Nations Economic and Social Council, established in 1992. It works on the basis of a social-economic definition of crime which puts an emphasis on: 'the social, financial and other costs of various forms of crimes and/or crime control to the individual, the local, national and international community, and to the development process', and also on 'the need of developing or developed countries to have recourse to experts and other resources necessary for establishing and developing programmes for crime prevention and criminal justice that are appropriate at the national and local levels'. United Nations General Assembly, 'Creation of an effective United Nations crime prevention and criminal justice programme', 77th plenary meeting, 18 December 1991 [online] <http://www.un.org/documents/ga/res/46/a46r152.htm> accessed 11/04/2009. The focus on organised crime which developed later reflected a more 'suppressive' than 'preventive' idea of dealing with crime.

actors and states to participate in international policy making along with the big nuclear powers. It also, in turn, allowed governments and elites to strengthen their internal position by subscribing to an international policy, which was more relevant to their citizens' concerns.²⁰ And these concerns were changing along with the changes in the international political and economic system, which came to be known as a rapid process of 'globalisation' in the post-bipolar world.

1.3. Framework: New Europe, democracy, law and order

The last decade of the twentieth century experienced a *fin de siècle* excitement coupled with new concerns after the end of the bipolar division in Europe and the world, exemplified by the 'New World Order', 'End of History' and 'Clash of Civilizations' theses.²¹ International politics had lost its 'balance of power' which opened the possibility of re-defining the rules and concepts of international affairs. Renewed attention was given to the developing world where failures of governments were creating internal problems that threatened state and regional stability, which prompted the fear that it would spill over the 'problem' zone. The unexpected fall of the communist regimes in Eastern Europe had partly triggered these new concerns with internal stability and security. In the period following the fall of the communist regimes and planned economy, the Western model of free market capitalism and economic integration were seen in the West as 'the key remedy' for the social and

²⁰ However, the level of cooperation between states against organised crime should not be overestimated. The case of the UN Convention on Organised Crime, which entered into force on 29 September 2003 demonstrates some continuing problems such as the need to establish a mechanism of resolving disputes between parties, the contested jurisdiction of the International Court of Justice, especially in the case of human trafficking. Some states such as Ecuador made declarations against criminalisation of migration; others such as El Salvador expressed reservation regarding smuggled immigrants ('that the return of smuggled migrants shall take place to the extent possible and within the means of the State'), and some like Saudi Arabia found the refugee status problematic; and most problems were encountered in negotiation a regime against illicit manufacturing and trafficking in firearms. See United Nations Convention Against Transnational Organized Crime and accompanying protocols

[online] http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf accessed 14/04/2004.

²¹ These were three popular ideas of the 1990s. The idea of the 'New World order' was used both by presidents Mikhail Gorbachev and George H.W. Bush to define the post-Cold War era based on a great power cooperation, built by their respective governments. The 'End of history' thesis was proposed by the American academic Francis Fukuyama in an essay titled 'End of History' published in 1989 and developed in his book 'End of History and the Last Man'. He argued that the end of the Cold War signalled the end of ideology and the triumph of liberal democracy. F. Fukuyama, *End of History and the Last Man*, Avon Books, 1992. The 'Clash of Civilizations' thesis proposed by Samuel Huntington conveyed the opposite message that the future ideological clash will be that of civilisations defined along cultural and religious lines and not states. S. Huntington, *The Clash of Civilizations and the Remaking of World Order*, Simon & Schuster, 1996.

political problems of post-communist Europe, given the example of the German economy being linked to the other Western European powers through the European integration after World War II, and also the fact that communism was perceived as inferior to the economic and political development which had occurred in the West. This was seen as an opportunity to build a New Europe of economic convergence and democratic equality. However, as Ezkenazi and Nikolov point out 'the transition to market economy required substantial investment. This was unavailable in the reforming countries, nor could it be provided by a Western Europe itself suffering from recession accompanied by xenophobia and a natural reluctance of its public to support costly commitments abroad and the opening of markets.'²²

The lack of financial commitment on the part of the West led to optimism about the future of Europe being overshadowed by a more pessimistic view reinforced by the difficulties of post-communist transition to market economy, the re-lapse into authoritarian rule in some Eastern European states. The violent intrastate conflicts in Yugoslavia and parts of the former USSR, and the perceived rise of internal conflicts in the Third World led to the discourse of 'New World Disorder'. In the Western countries with a well established capitalist system, the spread of liberalising policies and increasing global competition also had some negative social consequences in terms of social cohesion. In these conditions a major concern in Europe in the 1990s was the emergence of a new feeling of insecurity, a sense of lack of control over political and economic forces, and fear of external factors such as immigrant labour, international crime or terrorism.²³ These fears were not always evenly spread in what we can term as the 'west' as some of the capitalist European states and members of

²² I. Ezkenazi & K. Nikolov, 'Relations with the European Union: Developments to date and prospects' in I. Zloch-Kristy ed., *Bulgaria in a Time of Change. Economic and Political Dimensions*, Averbury Aldershot Publishing Limited, 1996, pp. 189-205, p. 189.

²³ However, in the period after establishing and intensifying their economic, political and social relations with the East after 1989, the EU member states suffered from no threat to their security either in the traditional military, 'hard security' sense, or in 'soft security' in the economic or political sense. Moreover, their prosperity seemed to be increasing rapidly and the political problems in Europe did not have a huge negative impact on the steady economic growth in the world (in net figures which do not represent its unequal distribution), which had started since the 1950s. The GNP per capita of the UK steadily grew from \$8,396 in 1985 to \$19,600 in 1996. France marked a continuous increase for the same period too: from \$9,550 in 1985 to \$28,870 in 1996, and Germany's GNP per capita grew from \$10,940 in 1985 (before the unification in 1989), and \$22,360 in 1990 to roughly \$28,866 in 1996. In comparison, the GNP per capita of Bulgaria had dropped from \$ 2,320 in 1990 to \$1,136 in 1996. M. Wyzan, 'Bulgarian Economic Policy and Performance, 1991-1997' in J. Bell ed., *Bulgaria in Transition*, Westview Press, 1998.

the EU were also seen as source of disorder and crime such as Italy, Spain, Portugal or Greece.

The issue of organised crime was therefore re-defined in these new geopolitical conditions. It was re-discovered as a potential common problem for less powerful as well as more powerful states, a 'new global challenge', which the world had to urgently address through international cooperation and joint policies.²⁴ In their work *Organized Crime and the Challenge to Democracy*, Felia Allum and Renate Siebert state that:

In reality, organized crime is very dangerous, but above all, in its most contemporary form, it has become practically invisible and all-pervasive. As white collar crime, it is fully integrated and immersed in our everyday lives, part of the socio-economic and political fabric of our society. Today, across the world, organized crime has come to threaten, for example, the lives of citizens in the USA, Nigeria, Belgium, Jamaica and Austria, the banking systems of the UK, Switzerland, Germany, Luxemburg or Liechtenstein and politics in Italy, Russia, Japan and the EU. Democracy is generally in danger.²⁵

In less developed countries crime was defined as one of the underlining problems alongside economic inequality, which led to state failure, and eventually civil war. According to Mary Kaldor:

A growing informal economy associated with increased inequalities, unemployment and rural-urban migration, combined with the loss of legitimacy, weakens the rule of law and may lead to the re-emergence of privatised forms of violence – organised crime and the substitution of 'protection' for taxation, vigilantes, private security guards protecting

²⁴ In the 1980s and the early 1990s when some European states suffered from cyclic economic problems, it was suggested that 'the economic crisis on the Continent results in a flushing out of existing fraud, and that bad ties tempt corporate managers to conceal their business problems'. S. Fromkin, 'The International Development of Economic Crime and its Control' in J. Reuvid ed., *Economic Crime Internationally*, London: Kogan Page, 1995, p. xiii.

²⁵ F. Allum & R. Siebert, *Organized Crime and the Challenge to Democracy*, London: Routledge, 2003, p. 1.

economic facilities, especially international companies, paramilitary groups associated with particular political fractions.²⁶

These dangers were not limited to Third World states but could be found in Europe, and particularly in the Balkans – seen as a traditional source of regional conflict with a potential of spilling over to the rest of Europe. The violent disintegration of the Balkan state of Yugoslavia in 1990s brought back images of the Balkan Wars of 1912-1914, the First World War, and Balkan genocide though whether the real history of the Balkans justified the fears of what Kaplan called ‘Balkan ghosts’ is a different matter.²⁷ The Balkans were again seen as a source of threat to the rest of the continent because of their instability which caused problems for the EU such as refugee flows, economic migrants and organised crime. The fears of spill-over of internal problems were linked to both the war-ridden Western Balkans, as well as the Balkan applicants, Bulgaria and Romania. This anxiety was expressed by the President of the Association of European Police Colleges, Albert Goedendrop: ‘When these countries become members of the EU, they will form the Eastern borders of our Union and if they can’t settle their own problems that means that, in time, these will be exported to the member countries of the EU’.²⁸ More recent research claims to establish a direct link between local organised crime and the 1990s wars in former Yugoslavia. According to a report published in December 2002 by the United States Institute for Peace, the ‘political economies of the region share a common, criminalized legacy’, and ‘failure to acknowledge the criminal threat earlier and develop the means to address it, has retarded peace building in Bosnia and Kosovo and is thwarting reform in Serbia’. The report further argued that, although the conflicts in the Balkans were defined in ethnic terms, ‘forces with roots in the criminal underworld played a leading role in this’.²⁹

²⁶ M. Kaldor, ‘Cosmopolitanism and organised violence’, Paper presented at Conference on ‘Conceiving Cosmopolitanism’, Warwick, April 27-29 2000.

²⁷ R. Kaplan, *Balkan Ghosts: A Journey through History*, New York: Vintage, 1994. For a contrasting view see M. Mazower *The Balkans: A Short History*, London: Weidenfeld and Nicolson, 2000 which argues that the Balkans is no more unstable historically than other areas. For the century-old tradition of vilifying the Balkans and defining the region as the ‘other’ Europe see M. Todorova, *Imagining the Balkans*, New York: Oxford University Press, 1997.

²⁸ Cited in F. Gregory, ‘Good Cops’: Issues related to EU Enlargement and the ‘Police’ requirements of the JHA acquis’, Working paper. ESRC ‘One Europe or Several?’ Programme, 2001 [online] <http://www.one-europe.ac.uk/pdf/w24gregory.pdf> accessed 15/10/2005.

²⁹ M. Dziedzi, L. Rozen & P. Williams, ‘Lawless Rule Versus Rule of the Law in the Balkans’, United States Institute for Peace, Special Report, 2002, no. 92 [online] <http://www.usip.org/pubs/specialreports/sr97.html> accessed 23/09/2005. The same was said of the

The export of anti-crime policies from the EU to the applicant states, and particularly the Balkans, has been both part of an internal ‘soft security’ agenda for the EU, and an external agenda of addressing ‘the implications of international change – including the rise in international crime and the expectations that the EU will assume more responsibilities for ensuring peace and security, especially in its periphery’.³⁰ The re-emerging Balkan fragmentation, civil war and potential infectious political problems brought in an international involvement of peace-keeping, peace-enforcement, use of air power and finally establishing protectorate states in the conflict zones, while engaging in ‘soft’ transformation of the rest of the Balkan states through a system of rewards, financial aid, and EU conditionality for membership. All these efforts were united by the view that the Balkan problems are rooted in local conditions and linked to poor governance and weak states with unconsolidated democracies and lack of the rule of law.

These problems re-defined European security as threatened by failed as opposed to powerful states. The Western Balkans became a ‘hard’ case of state building and democratisation, whereas the Eastern Balkans, and particularly Bulgaria and Romania, were managed from a distance in the hope of achieving ‘self-discipline’, in a Foucaultian fashion, through an EU guided process of ‘Europeanisation’. For the EU offering membership to the Balkan states was the way to stabilise the region after years of war in the 1990s but the states had to resolve their problem with organised crime. In a joint statement issued in 2003 the EU leaders explained ‘Organised crime and corruption is a real obstacle to democratic stability, the rule of law, economic development and development of civil society in the region and is a source of grave concern to the EU’.³¹ The EU-led policy of curbing organised crime in the states of the Balkan region was thus seen as part of establishing the EU as the agency of

IRA and the Northern Ireland conflict during the 70s and 80s. The IRA was closely associated with the building industry and black taxi trade. Many commentators noted that the end of ‘the troubles’ would be costly for the military-commercial organisations which had developed, and thus there were strong interests in Northern Ireland for continuing the lack of normality, and the subsequent power base which the IRA enjoyed. In the 1990s there were allegations that the IRA was linked to organised crime in the Balkans from which they obtained illegal arms.

³⁰ K. Smith, *European Union Foreign Policy in a Changing World*, Cambridge: Polity, 2008, p. 53.

³¹ BBC News, ‘EU Targets Balkans Crime’, BBC, Saturday, 21 June, 2003 [online] <http://news.bbc.co.uk/1/hi/world/europe/3008888.stm> accessed 30/03/2009.

international security, defined broadly as lack of (internal) threat to democracy, law and order.

From this perspective, the main concern of this thesis is been the value of international crime regulation as applied from top-to-bottom in conditions of existing power inequality between states. The main question which the thesis asks is whether such an approach creates more problems than traditional criminal justice policies, and more importantly, whether an international ‘fight against crime’ might also pose a threat to democracy.³² The EU member states have the ability to impose some democratic control over the EU policies through the European parliament or state parliaments but if the policies are pursued inter-governmentally, there is very little control over the way policies are applied to extra-jurisdictional territories. Therefore the thesis engages with the issues of the practical application of the anti-crime policies in Bulgaria in conditions of membership conditionality and seeks to determine the value of policies on the ground and to what extent they have improved or damaged the condition of the Bulgarian state internally and externally.

1.4. Research design and method

The thesis approaches the topic of organised crime from an international relations perspective and focuses on the development and the effect of international regulation of crime rather than the issue of crime itself. By taking this perspective, the thesis does not attempt to define or explain the nature of organised crime in Europe, or its case study Bulgaria. It is primarily concerned with the political circumstances, in which organised crime came to be defined and addressed by governments and international actors since the 1990s.³³ Some of the evidence used in the thesis pertains to what policy makers and/or law enforcers define as organised crime but the

³² Such a line of inquiry required a further identification of the conditions and definitions of democracy. The neo-liberal approach, which became popular in the 1990s and was proposed to and officially endorsed by the post-communist states, was based on the availability of strong institutions, the principle of check-and-balances, strong civil society, and legal protection of individual and minority rights.

³³ This point is made by Wright in relation to UN and EU definitions of organised crime, which he rightly observed ‘may be appropriate for the legal and political context that generate them [but] they do little to explain the deeper nature of organised crime’. A. Wright, *Organised Crime*, Willan Publishing, 2006, p.11. The approach adopted here takes the opposite direction to Wright’s analysis and that of other criminologists who study the nature of crime, and focuses on its regulatory context.

focus of the analysis is the development and application of the regulatory framework, and more specifically, the ‘pro-active’ fight against organised crime, taken up by the European Union, its members states and its members-to-be.

The main question which has informed the line of enquiry is why organised crime, an issue traditionally treated as part of a state’s domestic affairs, became a key problem in the international agenda? The initial research of secondary literature on the issue of international/transnational organised crime published in the 1990s identified the problem as permanently present in the international space and quickly replacing part of the gap left by the previous major security concerns of communism and super-power conflict. From this analysis it soon became evident that there was no clear theory which explains the link between international security and organised crime. This led to the initial hypothesis that addressing crime by international institutions was a top-down development rather than bottom-up identification of a need. According to the official view of the Council of Europe for example: ‘From the perspective of preventing organised crime and preventing people joining organised criminal groups or supporting the activities of such groups in any way, it may be very important to try to influence public opinion and to create and support anti-organised-crime attitudes.’³⁴ The initial research also identified that the European institutions were particularly active in presenting as organised what some legal systems would have interpreted as ordinary crime (or not crime at all). According to Europol: ‘illegal immigration, trafficking in human beings and car theft and trafficking, have in themselves become less open to ‘ordinary’ crime and are increasingly attracting the interests of organised crime groups’.³⁵ Additionally, the policy documents of Europol also attempt to redefine organised crime as encompassing all crime ‘from criminal collectives, initially organisations and later on criminal networks, to the individual ‘organised criminal’.³⁶

The thesis has used a set of methods, some of which were anticipated by the research design, and some of which emerged as possibilities during the development of the

³⁴ Cited in K. Gachevska, ‘Goodfellas against Godfathers: the fictional character of European Policing and European Crime’ in *European Studies Conference Proceedings*. University of Rousse Press, 2008.

³⁵ *Ibid.*

³⁶ *Ibid.*

research. Since the thesis is mainly concerned with the development of international anti-crime policies and the way these have emerged within the pro-EU circles, it was originally intended to explore the development of the policies at the source, i.e. Brussels, the European Commission, Europol, and the associated agencies.³⁷ However, after initial observations at international meetings with high profile officials, it was concluded that this level of policy formation is not sufficient for explaining the gaps and contradictions identified in the preliminary research and theory. Therefore the majority of the fieldwork was undertaken ‘on the ground’, i.e. investigating national and local developments. The case study of the thesis is Bulgaria, and the research has focused on the impact that the international anti-crime regime has had on the country. The project devised two strategies: observing and analysing the development of the organised crime discourse and policy internally, and then linking these to the external influences and the role of the EU and its enlargement conditionality.

These two strategies have informed the structure of the thesis. The first three chapters are largely concerned with analysing the development of the anti-crime regime internationally, with a focus on the EU. These chapters are primarily based on published and unpublished sources of a primary and secondary character. These include academic literature, articles, books, papers and commissioned reports; statistical data wherever it was possible to obtain; official documents, EU treaties, decisions, recommendations, reports, strategies, and other policy documents; media coverage and media statistics (i.e. rise of the number of articles on organised crime). The purpose of these chapters is to identify the aims and expectations of the new international anti-crime policy, the way it has developed within the EU and the way it has been influenced by different endogenous factors.³⁸ The main question

³⁷ The author gained access to a number of high-profile meetings where problems of Eastern European crime were discussed: Wilton Park Conference ‘The Justice and Home Affairs Agenda for South East Europe’, Winston House, Steyning, West Sussex, United Kingdom, 22-25 July 2002, Combating Terrorism and International Organised Crime in the European Union. International Seminar for Experts in the series *Great Debates*, organized by the Cicero Foundation, 14-15 December 2006, Paris, International Conference ‘Balkans and NATO: United Against Terror. Antiterrorism, Economics, Globalisation’, Sofia, Bulgaria, September, 2003; Round table *Organized Crime in Bulgaria: Markets and Trends* organised by Centre for the Study of Democracy, Sofia, Bulgaria, 12 December, 2007.

³⁸ While the method does not include elaborate models of analysis, it nevertheless takes into consideration the possibility that the development of events could be influenced by different variables, which the thesis does not test.

addressed in this part of the research was establishing whether the EU is developing a genuine EU-wide criminal law to counter the newly identified problem of organised crime. Both primary and secondary literature are quite ambiguous on the issue of whether the process is led by the EU or national governments, and whether it is caused by a genuine crime problem or a top-to-bottom policy aimed at the further deepening of European integration. Therefore this part of the research traces the conditions of the development of the policy in the 1990s, and the areas where it deepened, compared to areas where it did not develop at all, or did not develop much further.³⁹ The sources used here were mainly of secondary character such as academic publications and watchdog reports (such as Statewatch) but these were compared to primary sources such as treaties and various type of binding and non-binding EU legislation, as well as institutional reports.

The second part of the thesis is designed to test the intentions of policy and the limitations of its practical development. This part of the research was based on published and unpublished primary sources, combined with secondary sources, and interviews. This second part addresses three issues. First, the research focuses on what the EU anti-crime policy is and how that policy was exported to its future member states. This discussion is based on an analysis of publicly available PHARE projects fiches. PHARE was a programme set up by the EU to channel financial and expert resources to Eastern Europe, and it was used, *inter alia*, to diffuse the new norms in criminal justice and crime-fighting. The programme covered all the Eastern European applicants (and first Poland and Hungary) which had to develop projects, under the guidance of EU agreed programmes designed to bring the country closer to accession, often together with Western European partners, to apply for funds under the key areas identified by PHARE and the enlargement agenda. The projects were presented in project fiches, which are available from the EU and national web sites (not archived but some were ongoing at the time they were analysed). The information contained in these sources is fundamental for sketching the nature of the policy, i.e. the export of equipment and know-how to the future member states. This

³⁹ For example, the areas where the EU has been instrumental in developing policy is countering fraud against the interests of the EU (i.e. against EU funds) or a common policy on asylum, which became part of the supranational *acquis* compared to police and judicial cooperation which remained intergovernmental. Another example is the controversy over Europol and particularly the decision to not grant operational powers but in reality allowing such powers.

information was, however, corroborated by other primary and secondary sources such as official and unofficial reports on the development of the anti-crime policies prepared on the basis of fieldwork undertaken in Eastern Europe by other researchers or reporters.⁴⁰

Secondly, chapters six and seven the thesis focus on one of these recipients of accession aid in the Balkans, i.e. Bulgaria. The aim of this part of the research project was to explore, firstly, how the crime policy was endorsed by the country, and, secondly, to what extent it was been influenced by internal or external factors, i.e. EU conditionality and transfer of expertise. The use of case studies like that in 'Europeanisation' literature usually tries to determine the role of these two factors. Rational choice theory suggests that states have agency in adopting such policies, and they make choices rationally.⁴¹ Therefore this part of the research attempts to discover how Bulgarian policy makers exercised agency. The research method used an examination of the local conditions of transition and the identification of old and new elite interests and old and new party politics. The sources of information were widened to include media, party-associated and commercial, official statistics on crime, criminal justice and national security legislation, autobiographical accounts of the developments, documentaries and books on the 'Bulgarian mafia', blog entries on

⁴⁰ Direct contact was not established with those researchers (with the exception of the Centre for the Study of Democracy) and their reports were obtained online. They include: the output of a research project undertaken by a team of British academics under ESRC Award Scheme One Europe or Several, Crime, Borders and Law Enforcement: A European Dialogue for Improving Security: An analysis of the problems of transnational, specifically Russian, organised crime within and across the borders of the Baltic States [online] <http://www.one-europe.ac.uk/cgi-bin/esrc/world/db.cgi/proj.htm?id=11> accessed 02/02/2009; Rule of Law Programme of the Bulgarian Centre for Liberal Strategies and particularly the reports of their Task Force on Organised Crime in Bulgaria [online] <http://www.cls-sofia.org/en/projects/rule-of-law-17.html> accessed 02/02/2009; Reports on organised crime published by the Centre for the Study of Democracy, Sofia, Bulgaria, www.csd.org, accessed 02/02/2009; Klaus Jansen's report on Justice and Home Affairs in Bulgaria, commissioned by the EU [online] <http://www.cespolice.org/fra/docs/bulgarienbulgsachverstaendigenbericht.pdf> accessed 10/02/2007.

⁴¹ 'Europeanisation' generally refers to the adoption and domestic implementation of EU norms by member states and candidates for membership. The term is closely related to the process of enlargement and its internal impact on the applicant states. Most empirical studies focus on this process in the post-communist candidates in Central and Eastern Europe ('Europeanisation East') and identify three models which help explain the adoption of the EU norms their governments. These are: the *external incentives model*, linked to membership conditionality (i.e. the adoption of the norms is driven by the need to comply to membership requirements); the *social learning model* whereby candidates evolve to understand the advantages of these rules and apply them accordingly; and, *lesson-drawing model* which explains Europeanisation as part of the reform policies developed by governments as a result of internal dissatisfaction. F. Schimmelfennig & U. Sedelmeier eds., *The Europeanization of Central and Eastern Europe*, New York: Cornell University Press (Cornhill Studies in Political Economy), 2005.

general web sites but particularly web forums for legal professionals, reports published by local and international NGOs, and lastly secondary literature and reports on Bulgaria by local and foreign authors.⁴²

Apart from constructing the internal representation of crime, and development of anti-crime policy by using a variety of sources, this part of the thesis also focuses on external factors, mainly the influence of the international experts, visiting officials and international media. However, the core of the analysis of external factors concentrates on the role of the EU, which has kept a close link with the policy on organised crime developed by Bulgaria through the process of conditionality and annual monitoring. The research uses data from the EU monitoring reports and official opinions of the European Commission, data from the PHARE fiches on crime for Bulgaria, unpublished reports of EU experts, interviews given by officials in Bulgarian and foreign media, and lastly results from fieldwork in one of the evaluated cities in Bulgaria, conducted via interviews of local, senior law enforcement officers and members of the judiciary.

A cross-cultural method of observation from within and without was developed in order to give as comprehensive an account as extensive as possible of the whole process of development and application of the EU anti-crime policy. This type of analysis makes it easier to cross reference facts and sources to determine origin and vested interest of: the EU institutions, EU-funded agents, EU member states, foreign NGOs and NGO-funding bodies, researchers and reporters, Bulgarian state

⁴² Most valuable insight into the party politics and politicisation of corruption in Bulgaria is that of Ivan Krastev, currently Director of the Centre for Liberal Strategies in Sofia, Bulgaria. See for example, I. Krastev, *Shifting Obsessions: Three Essays on the Politics of Anti-corruption*, Central European University Press, 2004, and I. Krastev, 'Party Structure and Party Perspectives in Bulgaria', *Journal of Communist Studies and Transition Politics*, Vol. 13, No. 1, March 1997, pp.91-106. There is limited research into Bulgarian organised crime and the sources used are mainly police, NGOs and the media. The work of investigative journalist Jovo Nikolkov has been particularly useful and some of it has been published by academic journals. See J. Nikolov, 'Crime and Corruption after Communism – Organized Crime in Bulgaria', *East European Constitutional Review*, 1997, Vol. 6, No. 4. Marinova's work on the Bulgarian Criminal Justice reform has been particularly valuable for clarifying the main aims and steps taken by the reform. G. Marinova, 'Bulgarian Criminal Procedure: The New Philosophy and Issues of Approximation', *Review of Central and East European Law*, 2006, Vol. 31, pp.45-79. In this respect the study by Transcrime on some of the policies developed in Bulgaria contained useful information and has been based on data from Bulgarian experts. See TRANSCRIME, *The Contribution of Data Exchange Systems to the Fight Against Organised Crime in the SEE Countries*, 2004 [online] <http://www.stabilitypact.org/org-crime/data-exchange.doc> accessed 20/03/2009.

institutions (police, security services, and judiciary), NGOs, media, and finally, the Bulgarian public, which was identified mainly as an observer of the events.

1.5. Methodological issues

Researching policies against organised crime is a task as complicated as researching organised crime itself. There is hardly any international or regional organisation today which does not include the problem of crime on its agenda. The number of international and regional organisations itself is also growing, and it is difficult to cover empirically all of their policies, as well as those of several states, which participate in the organisations and have developed their own anti-organised crime policy. In the case of the European Union there is, additionally, the complex distribution of political power between supranational and intergovernmental bodies which also added to the problem of locating the actors and sites of power when it came to EU's anti-crime agenda.

Access to information on policy against crime is not always open, and there is secrecy surrounding the work of the law enforcement bodies of any country. The problem with securing access to such information has been that it is subject to scrutiny and management of the information that the institution is allowed to release.⁴³ Police data on crime, crime statistics and police activities are notoriously unreliable indicators of the level of criminality for any given society, and in the case study for this thesis the problem was exacerbated by the fact that some of the sources of quantitative and qualitative nature dated back to communist times and could be considered as inherently misleading.⁴⁴ In the case of police and crime research projects there are often considerations of researcher's exposure to intimidating circumstances.⁴⁵

⁴³ The researcher was unable to interview the representative of the British Serious and Organised Crime Agency (SOCA) who was stationed in the British Embassy in Bulgaria. The representative cancelled two interviews while the researcher was doing fieldwork in Sofia.

⁴⁴ However, it can also be considered as no less reliable than post-communist data when the collection of statistics changed and the institutions were under many political and financial strains.

⁴⁵ For example, in one of the interviews with a police official, the researcher was told that her cup of coffee could turn up at a crime scene investigation. Whereas it was difficult to decide if this was a direct threat or a demonstration of power on behalf the police, it was nevertheless an indication for the potential problems the researcher could encounter. The same interview was arranged as informal and the researcher was told to submit a list of questions (a tactic also used by another police representative). The interviewee said at the end that he would send answers to the questions from an

Using media coverage also entails difficulties. The media is an often used source for propaganda purposes, which was identified in one of the main media source used in the thesis – that of the *Demokracia* newspaper, which is the media platform for one of the major political parties in the country. Commercial media is no less influenced by other priorities that may be inconsistent with objectivity. It is concerned with sales and is likely to interpret events as ‘bad news’, which sells better than positive news. This is not limited to news about crime but also news, and investigative reports, about anti-crime policy. This was identified in the second major media source, the Bulgarian weekly analytical newspaper *Capital*. Most of its analytical materials which contained criticisms were not always properly researched and possibly designed to offer an outlet of its readers’ negative feelings towards the government. Much of *Capital’s* criticism of the anti-crime policy for example did not place this policy in a wider context of accession and EU demands but was seen as personal quests for power through centralisation without acknowledging that the police centralisation was the accepted EU norm for fighting organised crime.⁴⁶

Similar caution has been taken when interpreting data from Bulgarian non-governmental organisations (NGOs). Centre for the Study of Democracy (CSD) is the main NGO which has been very active in the anti-crime and corruption area but a review of its foreign funding and collaboration with the Bulgarian police raises questions about its objectivity.⁴⁷ CSD’s reports on crime and illegal trafficking in

anonymous e-mail, and the researcher was not supposed to reply to that e-mail because its address may no longer exist. This experience is comparable to similar problems that other researchers have encountered when interviewing representatives of organised crime in Eastern Europe. Therefore intimidation in such cases could be interpreted as cultural (such as constructing masculinities especially facing a female interviewer) as much as institutional. See for example, P. Rawlinson, ‘Look who’s talking: interviewing Russian Criminals’, *Trends in Organized Crime*, 2008, vol. 11, No. 1, pp. 12-20.

⁴⁶ Such interpretations can be very misleading. The extensive research undertaken in this thesis demonstrates that it is a EU requirement for the Bulgarian policing structures to become more centralised and focused on organised crime, rather than the political or career ambitions of members of the Bulgarian government. There is a similar trend to over-criticise the judicial institutions and identify personal power ambitions instead of structural problems.

⁴⁷ According to CSD’s 2002 financial report, for example, the organisation received BGL 1,565,062 for 2002, of which 928 144 (around 60%) were foreign financing for projects linked to crime and corruption. In 2003, CSD received BGL 2,548,136 for researching crime and corruption, which was 80% of its external funding for projects. Added to that, in 2003 and 2004, the CSD’s external funding was almost exclusively for projects linked to organised crime, and in 2005 they form a great part of the activity of the organisation. Some of the donors are: The German Marshall Fund for projects on Illegal Trafficking and Corruption in Southeast Europe; Royal Norwegian Embassy – Trafficking and Corruption Monitoring and Prevention; British Embassy – Trafficking and Corruption in Bulgaria,

Bulgaria and the region are very extensive but rely on secondary data and assumptions about criminal structures and networks, which are not based on fieldwork studies. Data published by CSD has been used in many other national and international sources, and especially the media, and these sources have not always acknowledged using CSD's reports but often refer to it broadly as sources from the Bulgarian non-governmental sector. CSD's data has even reached the British readers via Misha Glenny's book *McMafia: A Journey Through the Global Criminal Underworld*, in which he devotes a section on Bulgarian organised crime, based on CSD reports.⁴⁸

Finally, the thesis encountered the tricky problem of using crime statistics. This problem had two sides. As mentioned above, criminal statistics are usually not a reliable source of the crime rate in any country because they conceal as much as they reveal about the level of unlawful activity within the given jurisdiction.⁴⁹ At best crime statistics show the level of crime in sectors of social activity and perpetrated by a particular social groups (such as for example street crime or working class crime), and often these sectors are defined by police work.⁵⁰ Secondly, crime statistics cannot show what percentage of crime falls in the category of organised crime. Legally, crime statistics cannot reflect organised crime as the criminalisation of membership in organised crime is not always present, and if it is, then it has an aggravating effect and does not constitute crime alone. Organised crime may also fall in the category of 'victimless crime' and those affected by it are less likely to report offences officially. Therefore the existence and extent of organised crime is partly determined by 'estimates' of the police. Furthermore, organised crime tends to be defined in accordance with political imperatives such focusing on people or drug trafficking from less to more developed countries.

Saferworld UK – Implementing and Enforcing Arms Export Controls and Combating Small Arms Proliferation in Bulgaria, European Commission – The Informal Economy in the EU Accession Countries, and others The financial reports are available at the organisations web site www.csd.bg.

⁴⁸ M. Glenny, *McMafia: A Journey Through the Global Criminal Underworld*, New York: Alfred A.Knopf, 2008. The book became better known in the UK because of a series of excerpts published in the UK Guardian newspaper in 2008.

⁴⁹ The crime statistics in the UK and USA for example have been criticised for under-reporting. Z. MacDonald, 'Official Crime Statistics: Their Use and Interpretation', *The Economic Journal*, vol. 112, February, 2002.

⁵⁰ N. Gilbert, *Researching Social Life*, London Sage, 2001, p.16.

These problems with crime statistics are identified both in the research on crime in Europe, which is part of this thesis, and crime in Bulgaria. Furthermore, comparative use of statistics internationally is complicated by differences in crime definitions, crime recording, and crime classification. The crime recording methodology used in Bulgaria has experienced a few major alterations, which further mystify the real level of crime. Identifying the role of such changes, along with the role of social change over types of crimes, was one of the more intricate tasks of this thesis. Whereas it has been difficult to determine levels of crime in Bulgaria in comparative terms, the thesis has pointed at the paradox of developing of an anti-organised crime policy without proper organised crime statistics, which is a fact to be interpreted on its own.

1.6. Case study and fieldwork

The researcher is unusual in being a Bulgarian citizen but having worked for nearly a decade in the UK. She is originally from a border town in Bulgaria and had the opportunity to observe two aspects of the policy: the reform of internal criminal justice system, and the efforts in enhancing the state's the border controls.⁵¹ The main research for this thesis was undertaken during three 3 research trips to Bulgaria but the process of observation has extended during personal visits in the country in the period of 7 years. Although most of the printed sources were collected on a national level and mainly in the capital Sofia, the direct fieldwork concentrated on a local case study of the border city of Rousse. This case study was observed in relation to the developments on the national level.

The institutional changes in Bulgaria have entailed a transition from a communist and state-controlled structure of the police where conspiratorial types of crime, of which organised crime is a part, was originally investigated (before 1989) by the state's secret services. After the transition, the regular police in Bulgaria had to take on increased investigative powers, and concentrate on fighting organised crime – a task it had not previously performed. Additionally judicial power during communism was associated with state government, the post-communist reform focused on the

⁵¹ This is the city of Rousse, whose case is discussed in the final part of the thesis. It is city situated on the border with Romania, which joined together with Bulgaria in 2007 and was therefore a subject of the same conditionality and monitoring.

separation judiciary and executive, and other complications such as the functional divisions of the criminal justice system (for example, the existence of military courts where police crimes were tried). The border guard subdivision was itself undergoing a reform aimed at demilitarising its ranks and transforming it into a border police with a civil outlook. All these processes were accompanied by an increased centralisation of the policing institutions under the control of the central government. It was expected that the observations and interviews with the police would be highly problematic given the tense atmosphere of reform and increased public and NGO demands of ‘policing the police.’

These problems created two main considerations for interpreting the fieldwork results. Firstly, the need to take into account an anachronistic police culture of hierarchy and control, mixed with external pressures and increased internal regulation, which led to a defensive attitude in interviews, as well as a tendency to overestimate activities and results. Secondly, to consider the possibility that the police interpretation of the policy did not necessarily coincide with the original intentions of its makers. As Fielding notes: ‘A theme of police fieldwork is that ‘the ranks’ can so translate policies into practice that they lose their original character, sometimes producing the opposite of what was intended’.⁵² This is an observation which is sometimes noted by officials and experts when justifying policies or dismissing its malfunctions as ‘bureaucratic problems’.⁵³ The thesis has tested the viability of such claims and some of the problems were found to originate in wrong conceptions or policy or resource limitations.

The results of the observation and interviews were triangulated with other sources of information to ensure maximum validity. The data from the police was compared with data from the interviews with the judiciary, media coverage, official documents and reports prepared for external examination by the European Commission. This method encountered one major problem: since the relationship of the police and crime and Bulgaria-EU relations were highly publicised by the media, it was possible

⁵² N. Fielding, ‘Fieldwork and policework’ in D. Hobbs ed., *The SAGE Handbook of Fieldwork*, University of California Press, 2006, pp 277-306, p. 279.

⁵³ This was noted by the author at a meeting dedicated to the international crime and its policies held in Paris, where criticism of the way policies were applied was opposed by the argument that these were bureaucratic problems and they do not show that the policy itself was wrong. This statement was made by the US Ambassador in Paris.

that *all* sources of information would be influenced by the media coverage. One aspect of the transition in the former Soviet bloc has been a change in the nature of the media itself which has led to a much more Western style of reporting and presentation.⁵⁴ Whereas before 1989 there was close state control of crime reporting, once the transition began a similar pattern of crime reporting began to emerge to that in the West. The role of the media therefore is crucial in interpreting the case of the anti-crime policy in Bulgaria. Media was used by institutions, by political parties, by NGOs and by external actors – both as a source of information, and a tool of presenting a particular image or transmitting a message to targeted audiences.⁵⁵ Therefore there is a danger that the data from interviews may not always be entirely uninfluenced by these public discourses. Clearly subjective statements made by the interviewee were interpreted as such rather than objective information. For example, in some of the interviews statements were made which were not supported by specific examples from the interviewee's experience and were related to the work of others, or have been identified by the researcher as originating from mass media reports (such as statements made by the police about the judiciary, or vice versa, or statements made about corruption of politicians). Some of these statements were also observed in the media, or attitudes of the general public. Therefore the researcher has concluded that in some of those cases the opinions expressed have been externally influenced. In these cases the statements are used as evidence in themselves, i.e. as a sign of intra-institutional or intra-personal conflict, or attempt to demonstrate competence or avoid responsibility. This has been done with caution in order to avoid the problem of using evidence which matches theory rather than reading evidence in an unbiased way. Finally, all of these issues identified by the thesis have enhanced the final conclusion relating to the gap between policy expectations and policy outcomes because discussions of crime always reflect the interactions between policy initiatives, professional elements and 'public discourses' as well as the reality of crime itself.

⁵⁴ See C. Sparks & A. Reading, *Communism, Capitalism and the Mass Media*, London: Sage, 1998.

⁵⁵ On the dubious relationship between post-communism, media, politics and crime see V. Popov, *The Relationship Between Mass Media and Organised Crime in Post-Soviet Russia: A Sociological Perspective*. Unpublished PhD thesis. City University, 2005 and M. Łoś, 'Post-communist fear of crime and the commercialization of security', *Theoretical Criminology*, 2002, vol. 6, no. 2, pp. 165–188.

1.7. Conclusion and thesis structure

This thesis embarked on a complicated task and relies upon the analysis of a large body of evidence and the need to distinguish between evidence and opinion. The most difficult part of the research was, however, the identification of the indirect responsibility for the local problems that the international anti-organised crime crusade had created. As with any piece of research, establishing links between variables and developing a theory out of such links is laborious process of excluding other possibilities, comparing with similar cases, identifying lowest common denominators. As discussed in this introductory chapter the choice of method and the selection of sources of data for this thesis are inter-disciplinary. Each method of collecting and interpreting data has been useful but has also given rise to some methodological concerns and limitations discussed above.

The thesis contains eight chapters. Chapter two, which follows, sets the international scene in which organised crime made its re-appearance in 1990s. It is entitled '*New Europe*' and the *Emergence of Norm Making Accession* and focuses on the new geopolitical conditions in Europe, which combined with increased economic and political pressures for de-regulation, led to strengthening the role of the European Union in Europe. The path of political development which the EU took in the 1990s parted with its previous pre-occupation with economic issues arising from various interests and concentrated on building a common identity based on norms, including non-military shared security and fighting against organised crime.

Chapter three *From Hard Security to Soft Security and the 'Organised Crime Threat'* deals with the complexity of international relations and security theory which informed the developments in Europe. It seeks to challenge the view that organised crime is a threat to international security by engaging with the process of construction of this new threat as a part of a whole new agenda of 'soft' or non-military security. The critique is built through a close review of those aspects of criminological theory which for decades have grappled with the issue of organised crime. It is argued that there is no secure basis for the claim that organised crime can pose a threat to states and international security. This chapter therefore identifies the major conceptual pitfalls of the anti-organised crime policy.

Chapter four *Organised Crime in Europe and the Emergence of EU's Internal Security Governance* traces the historical development of international criminal justice cooperation and seeks to identify whether the policy developed by the EU since the 1990s can be seen as a continuation of these initiatives, or a new development built on the basis of existing fragments of policy. The chapter concentrates on the rise of initiatives in the so-called Justice and Home Affairs area, and particularly on organised crime, and links these to common political interests, rather than an identifiable common organised crime threat.

Chapter five *Organised Crime and EU Enlargement* looks at the external dimension of the EU anti-crime policy expressed through the EU's interest in spreading its new norms outside of its borders. One of the instruments used is the process of enlargement and the use of membership conditionality. The chapter analyses this policy by looking the anti-crime projects funded by the EU in the countries of Central and Eastern Europe.

Chapter six *Bulgaria: Post-communism and Organised Crime* constructs the internal discourse of organised crime in the case study of Bulgaria by using a variety of sources. The anti-crime policy adopted by Bulgaria through its subscription to the new international norms was internally linked to building democracy, institutional reform and even economic re-structuring. The chapter traces these developments from within which it then links, in the next chapter, to the external factors influencing this policy from without.

Chapter seven, *Organised Crime and Bulgaria's Accession to the EU* analyses the problems encountered by Bulgaria through the prism of its external observation and monitoring from EU experts. Even though the role of these external observations is not directly associated to what happens on the ground in Bulgaria, the chapter claims that there is a direct effect of EU reports and suggestions upon Bulgarian anti-organised crime policy, whose deficiencies the Bulgarian state was then required to account for.

Chapter eight presents the thesis's final conclusion. It traces the development and main findings of the thesis, and links these to an overall conclusion about the nature of the European integration since the end of the Cold War, and what this tells us about the wider world.

Chapter 2. ‘New Europe’ and the Emergence of Norm Making Accession

2.1. Introduction

The purpose of this chapter is to set the geo-political background of the development of the European Union’s (EU) anti-crime regime in the 1990s. It rests on the premise that this regime needs to be seen as part of a wider set of developments in world politics, linked to pre 1990s conditions but also shaped by the changes which happened with the end of the bi-polar division of the Cold War. The first decade after the end of the Cold War in 1990-1991 was marked by a seemingly parallel process of continued integration amongst western European states through the structures of the European Communities, later transformed into a European Union, – whilst a process of fragmentation took place in some of the states in Central and Eastern Europe (CEE).¹

These political and social changes had a major impact on the conduct of international relations in the continent and the wider world. On one hand, the collapse of communism led to the optimism about the future of Europe as a post-ideological common space of peace and democracy, a single market, cooperation amongst politically equal member states. But on the other hand, there was no consensus on how this future would be built and the fall of the bi-polar constraints on world politics removed much of the impetus for political and economic concessions. This led to a widening gap between expectations and the stark realities of rising inequality between the two parts of Europe and the growing avalanche of political and social problems in the East. Therefore instead of swiftly accepting and incorporating the post-communist states as equal participants in the process of European integration, the process itself became a project of creating ‘equals’ through a renewed agenda of (re-)building the ‘New Europe’. The anti-crime policies undertaken by the European Union in the 1990s were part of a perceived need to create a ‘new’ type of security for the citizens of the Union, where the problems and sources of instability were

¹ Germany, also considered a central European state, underwent the opposite process of a political unification of its two parts which had been separated in the post-Second World War settlement.

minimised through creating and diffusing new international norms, particularly to those perceived as lacking in capabilities such as the states in transition.

There are more specific justifications behind this policy which can be found in multiple local conditions. The EU anti-crime policy has been linked to the increase of fear of crime in some West European societies during the period, to the compensatory measures taken by the EU in the process of removing internal border controls, or even to the move to more security and safety focused internal policies adopted by some European governments and their attempt to extend jurisdiction or secure extradition from other countries. But the internationalisation of anti-organised crime policy, seen in the broader context of the changes in Europe and the world during the 1990s, may help explain the fact that ‘there is no other example in the history of EC/EU integration process of an area of previous loose intergovernmental cooperation only having made its way so quickly to the top of the Union’s political and legislative agenda’.²

Therefore, this chapter reflects a more complex understanding of the endorsement of the ‘fight against crime’ by the EU which incorporates more specific theories explaining the European integration, security and crime nexus but which focuses on its global structural conditions. The structure of the chapter itself attempts to reproduce this complexity and draws the attention to several key factors, namely the end of the Cold War and its ideologies, and the re-emergence of the idea of ‘New Europe’, the expansion of security thinking in Europe, and the development of the European Union as a normative/security structure in Europe. The discussion draws heavily on the historical development of the ideas and realities of Europe, and seeks to underline the continuity and change in contemporary European politics in order to enhance a deeper understanding of the development of the particular East-West relations in the fight against international crime in the 1990s.

² J. Monar, ‘EU Justice and Home Affairs and the Eastward Enlargement: The Challenge of Diversity and EU Instruments and Strategies’, C91 ZEI Discussion Paper, 2001, p. 3.

2.2. 'New Europe'

The phrase 'New Europe' re-entered the political discourse in 1990s after the end of the Cold War and East-West ideological rivalry. The idea of 'New Europe' itself is not new, and it was first used in the nineteenth century to signify optimism for the future of the continent inspired by the achievements of the industrial revolution and its capacity for economic and social progress. A brief overview of the more recent 'New Europe' literature shows the versatile use of the phrase in many projects, which sought to address political problems in the Old Continent. There are, for example: 'The New Europe: revolution in East-West relations' by Nils H. Wessell, discussing West Germany, NATO, Soviet Union, Eastern Europe, the Warsaw Pact, Gorbachev, Czechoslovakia, perestroika, common European home; or *The New Europe: Politics, Government and Economy Since 1945* by Jonathan Story, expanding the time-span of New Europe to post Second World War conditions; or *The New Europe. Economy, Society & Environment* edited by David Pinder, which focuses on the post-Cold War developments and includes the new environmental issues and politics; or Roger Brubaker's use of the term in a shift of focus from the 'old 'New Europe'' to the 'new 'New Europe'' in his *Nationalism reframed: nationhood and the national question in the New Europe*.³

For the proponents of the idea of 'New Europe' in the 1990s the term exemplified the new way of thinking about the world in the post-Cold War era, and the hope for a better future after the fall of communism and the perceived victory of Western capitalism. The end of the totalitarian regimes in most of the Eastern European countries by 1990, and the gradual opening of their economies and political organisation to the Western way, was seen as a new opportunity for Europe to correct the errors of the previous century's uneven socio-economic development and the eventual ideological split in the continent after 1945.⁴ From a different perspective, however, others thought it displayed an ambition for remaking Europe along

³ N. Wessell ed., *The New Europe: revolution in East-West relations*, New York: Academy of Political Science, 1991; J. Story, *The New Europe: Politics, Government and Economy Since 1945*, Blackwell Publishers, 1993; D. Pinder ed., *The New Europe. Economy, Society & Environment*. New York: John Wiley&Sons, 1998; R. Brubaker, *Nationalism reframed: nationhood and the national question in the New Europe*, Cambridge University Press, 1996.

⁴ D. Pinder, 'New Europe or New Europes. East-West development dynamics in the twentieth century' in D. Pinder ed., 1998, *op cit*.

redefined East-West divisions and the re-establishment of neo-colonial domination on behalf of the powerful Western states, sometimes also described as 'New France' or 'New Germany', or even Britain under 'New Labour'. In the process of opening the dialogue between East and West in Europe, the relations between the two were increasingly shaped on the basis of the old 'East' accommodating to the 'West' in the form of the European Union and other 'western' organisations. This new aspiration in practice re-dressed the concept of 'New Europe', so that today it is more exclusively associated with the new post-communist democracies and their specific path of development towards political and economic convergence with Old Europe, or the West.⁵

The idea of 'New Europe' reflected the perception of the existing difference and separation between the Eastern and Western part of the continent.⁶ This difference is often framed in historical economic and social terms. According to Pinder, the economic gap between Eastern and Western Europe has developed since the industrial revolution as 'to a great extent eastern and central Europe remained essentially agrarian, while the west diversified and grew through industrialisation'.⁷ Despite existing internal disparities in both East and West, such as more successful 'pockets' (generally catholic, Austro-Hungarian territories) of heavy industry in some CEE, and struggling Western economies hit by global competition, the general conclusion was that the territory beyond the Iron Curtain had contained weaker and more backward economies and more impoverished and less protected populations – even long before the political divide in the post-war period. From this perspective, the establishment of communist regimes in Eastern Europe after the war, following

⁵ The 'Old Europe' has its own recent re-emergence in the political vocabulary. The term was famously used by US Secretary of Defence in the Bush Administration Donald Rumsfeld in 2003, in connection with the pro-American position, which some Eastern European states took during the US led invasion of Iraq in the same year. This use of the term by Rumsfeld suggested that 'New Europe', i.e. Eastern Europe, was different and better because of its opposition to most of the Western European countries' critique of the American invasion of Iraq. BBC News, 'Outrage at 'old Europe' remarks', BBC (UK) 2003 [online] <http://news.bbc.co.uk/2/hi/europe/2687403.stm> accessed 20/08/2008. In a visit to the US some years later British Prime Minister Gordon Brown pledged: 'There is no old Europe, no new Europe, there is only your friend Europe'. 'Gordon Brown tells Congress: Work with your friend Europe', *Times Online* (UK), 4 March 2009 [online] http://www.timesonline.co.uk/tol/news/world/us_and_americas/article5844588.ece accessed 05/04/2009.

⁶ This has been interpreted as a way of establishing identity/agency in post Cold War world order. E. Kavalski, 'The Balkans after Iraq, Iraq after the Balkans: Who's Next?' in N. MacQueen and T. Flockhart eds, *European Security after Iraq*, Brill, 2006, pp. 135-59.

⁷ D. Pinder, 1998, *op. cit.*, p. 6.

the lead of the already communist USSR could be interpreted as an attempt to encourage industrial development and agricultural modernisation through better organisation of resources and mutual help within the Council of Mutual Economic Assistance (CMEA). However, although the communist system of planned economy had some remarkable results in the first decade after its establishment, it failed to maintain its economic progress despite initially achieving some economic convergence in 1950-60s (for Soviet Union this was in the 1930s).⁸ It collapsed at the turn of the 1990s only to reveal the continuation of the regional economic disparity in the continent, and a 'general failure to catch up with the developments in Western Europe'.⁹

This disparity is not observable only in terms of this East West divide. Disproportionate economic expansion exists amongst the countries of each side, as well as amongst regions within countries. Examples of non-communist economic laggards are Greece, Portugal, Spain and, before the 1990s, Ireland.¹⁰ But the north-south division in Europe, although not without its issues, has not carried the same sense of historic divide as that inherent in the idea of a West-East division, which has developed and worsened over the last 200 years.¹¹ Therefore 'the variegated territorial characteristics of economic life in the New Europe are a major dimension of division in the continent as it enters the twenty-first century'.¹² The reasons for this division remained more obscure than establishing the fact itself. Most commonly they would be linked to local conditions, and most recently, traced in the nature of the communist economy. The economic development of the post-communist states since the 1990s has created ever more divergence within and between these countries, and yet they have been lumped together under the term Eastern Europe

⁸ A. Smith, A. Rainnie & M. Dunford, 'Regional trajectories and uneven development in 'the new' Europe: rethinking territorial success and inequality', in H. Wallace ed., *Interlocking Dimensions of European Integration (One Europe or Several?)*, Basingstoke, UK, Palgrave Macmillan, 2001, pp. 122-144.

⁹ M. Dunford & A. Smith, 'Uneven development in Europe' in D. Pinder ed. 1998, *op.cit.*

¹⁰ In the case of these states it was also hoped that there would be some closure of the gap with the most developed EU countries after joining the Union and the benefit from the single market and more investment, but also from the additional intensive EU subsidies and financial aid. It is argued that the accession of these countries to the EU had political rather than economic rationalization. Some view the provision of financial assistance to the poorer states and regions within the union as a compensatory measure to correct the existing and potential inequalities due to the development of liberal market policies within the EU although they had limited success in achieving that aim. T. Cutler *et. al.*, 1989, *op.cit.*

¹¹ A. Smith *et. al.*, 2001, *op. cit.*

¹² *Ibid.*

(divided into three groups of more, medium and less developed Eastern European states), or New Europe, when compared to the core EU member states, or Western Europe.¹³

The fall of communism in late 1980s and early 1990s was celebrated as a failure of centrally planned socialist economy and ‘victory’ for the model of Western market capitalism, though this overlooked the fact that the latter had not been successful in creating economic equality in its traditional geographic area of Western Europe. The greater relative failure in the former Soviet bloc, however, meant that the newly independent states of Eastern Europe were faced with the difficult choice of deciding their future path of development. Some of them, and particularly the Central European states of Poland, Czechoslovakia, and Hungary immediately started applying Western-supported economic plans for price/market liberalisation, privatisation, budget constraints to cope with debt repayments.¹⁴ Others adopted these policies more selectively and later in the 1990s, such as the Balkan states of Bulgaria and Romania, and some of post-Soviet republics like Ukraine though in more limited form.¹⁵ Politically, the post-communist states established representative democracies and changed their governments through free elections although some had difficulties with safeguarding their newly established democratic processes. The dual process of transition to market economy and democracy was seen as the way towards economic convergence with Western Europe although in reality a number of post-communist states (those with closer ties with the Russia) were slower to arrive at the idea of participation in the Western structures of European integration and had to overcome a significant internal political resistance to such policies.

¹³ See S. Wagstyl, ‘How To Annoy Someone From Eastern Europe’, *Financial Times* 27th Feb 2009 [online] <http://www.ft.com/cms/s/0/5618118a-0507-11de-8166-000077b07658.html> accessed 05/04/2009.

¹⁴ These reforms were funded externally. For example the PHARE programme was originally intended for Poland and Hungary and this is where it took its name from: Poland and Hungary Assistance for Restructuring Economies (later expanded to the other applicant countries). One reason is that these countries were physically adjacent to Austria and Germany and had stronger historical links and indeed had seen their territories either directly or through colonial means. Cities like Prague, Budapest and to a lesser extent Warsaw were very much part of ‘old Europe’ prior to the Second World War. They also provided an investment opportunity for German and Austrian capital in the 1990s as well as in previous historical periods.

¹⁵ Bulgaria for example was physically isolated too and the 1990 elections returned the socialist party who were reluctant to embrace the changes. Both Bulgaria and Romania lacked the connections to Western countries of the Central European states.

In the course of the 1990s the expansion of the Western model, and especially the closer integration to the economic and political structures of the European Union was defined as the only realistic and obtainable alternative for 'New Europe'. The actual results of the policies prescribed by the EU and other Western bodies, such as the International Monetary Fund and the World Bank, to the countries in transition were more ambiguous.¹⁶ The developments in Eastern Europe since the 1990 have been defined as a paradox of the transition and integration, inspired by the hope of closing the economic gap between East and Western Europe, which have instead brought an increasing divergence and 'the various attempts to build and establish forms of capitalist and market relations in the former 'communist' world during the 'second transition' (since 1989) have [...] had enormously uneven impacts at both national and subnational scales.'¹⁷ This was especially apparent, as table 2.1. shows, in the first years of transition. Yet, the alternatives were increasingly diminishing and the views (if not the economic conditions) of local elites in both East and West were converging towards support for integration. Romano Prodi, the President of the European Commission in 2003 summarised this: '[U]nification of the Continent is the only alternative for any of us...[T]hat all that battling for territory is a thing of the past ... The fact that the new applicants are coming to us with arms outstretched tells me that we Europeans really have learned something from the tragedies of the past after all.'¹⁸

¹⁶ See for example R. Portes, 'Transformation Traps', *Economic Journal*, vol. 104, no. 426, September 1994, pp. 1178-89.

¹⁷ A. Smith *et. al.*, 2001, *op.cit.* It is worth noting that the rise of inequality and poverty is not limited to Eastern Europe but has spread in Western Europe too during the same period of the 1990s and beyond.

¹⁸ R. Prodi & T. Øra, 'A New Europe. Romano Prodi talks to Truls Øra', *Eurozone*, 2003 [online] www.eurozone.com accessed 20/04/2008. Paradoxically, there was a growing movement in the West against integration though the populations therein had no ways of expressing it. In the 2000s this was expressed by the 'No' vote to further integration in some national referendums.

**Table 2.1. Selected Transition Economies: Cumulative Change in GNP, 1989-97
(in percentage) ¹⁹**

| | 1989-97 | Peak decline since 1989 (lowest level of GDP since the beginning of transition) |
|----------------|---------|---|
| Albania | - 20.3 | - 40 |
| Bulgaria | - 36.8 | - 37 |
| Czech Republic | - 8.0 | - 21 |
| Hungary | - 9.6 | - 18 |
| Poland | 11 | - 18 |
| Romania | -19.3 | - 26 |

The idea of ‘New Europe’ coincided with the idea of the ‘New World Order’ and the ‘End of History’ theses which were said to herald the disappearance of the non-democratic and non-capitalist alternatives for development. However, just as in economic and political terms so in the wider realm of international relations, East/New Europe and West/Old Europe were in different positions in relation to each other despite their declared desire to unite. They had different roles and responsibilities in the development of a new framework of security and stability in a ‘united’ Europe. In this framework, the presumed political equality between states based on their sovereignty lost priority in the face of the need for guidance for the new states’ transitions to democracy and the market economy and the adoption of the newly established European norms and conditions for EU membership.²⁰ The EU on the other hand now acquired a central role in the project of (re-)building a ‘New Europe’.

¹⁹ Source: IMF Staff Country Report 99/26. *Bulgaria: Recent Economic Developments and Statistical Appendix*, 1999, p.121 [online] http://econpapers.repec.org/paper/imfifmscr/99_2f26.htm accessed 04/05/2005.

²⁰ Despite the perception of a grand division between West and East, or EU and non-EU, there is a myriad of micro relations between the states of each side. The EU and the member states did not have a single joint position on external affairs, and the idea of a common foreign policy was embryonic throughout the 1990s. Even the civil wars in former Yugoslavia did not provoke an immediate and unified reaction but revealed a number of disagreements between the EU member states, with Germany leading a proactive Eastern policy and Britain and France demonstrating different views or interests. See for example, D. Chandler, ‘Western Intervention and the Disintegration of Yugoslavia 1989-1999’ in E. S. Herman & P. Hammond eds, *Degraded Capability: the Media and the Kosovo Crisis*, London: Pluto Press, 2000, pp.19-30.

2.3. The road to an expanded European Union

The role of the European Union in Eastern Europe's re-alignment to Western values was not formulated until 1993 when the idea of EU enlargement came to the fore. Immediately after the fall of the Berlin wall there was no indication either Eastern or Western Europe had envisaged a united Europe together.²¹ Most of the Eastern European countries had problems of determining their future and surrendering their new-found sovereignty to the EU was not considered an obvious option. The EU itself was struggling to determine its current and future economic and political character and was torn between what were considered as the options of 'widening or deepening'. According to Cutler *et al.* the major problem at the beginning of 1990s was 'the political struggle to impose a liberal market definition on developing European institutions' in the face of opposition from collectivist or socialist ideas about the future of the EU.²² The 'deepening or widening' debate on the other hand reflected the struggle for preserving sovereignty, i.e. not allowing further integration to undermine the power of national governments, and suggesting enlargement as an alternative.²³

The dilemma of 'deepening or widening' has been a central issue since the conception of the EU in 1950s as the original European Communities.²⁴ According to Haynes and Pinnock, 'it seemed that European integration had reached a plateau in the mid-1960s and 'Eurosclerosis' set in as integration did not provide a sustainable basis for cohesion and growth.'²⁵ However, the political will for expanding integration was maintained through the increase of member states starting in 1973, after some initial difficulties and not least French President De Gaulle's opposition to the entry of the United Kingdom. By the end of the 1980s the members of the

²¹ W. Wallace, 'Enlarging the European Union – an overview' in C. Ross, ed., *Perspectives on the Enlargement of the European Union*, Leiden: Brill, 2002.

²² T. Cutler, C. Haslam, J. Williams & K. Williams, 1992 – *The Struggle for Europe. A Critical Evaluation of the European Community*, Berg Publishers, 1989.

²³ Sovereignty can also be interpreted as anti-collectivist. T. Cutler *et al.*, 1989, *op.cit.* p. 145.

²⁴ The so-called European Communities consisted of the European Coal and Steel Community, formed in 1951, European Economic Community (1957) and the European Atomic Energy Community (1957). These are three of a few post-war regional organisations in Europe and initially included the small number of six member states, situated in the core of the continent, as opposed to other states in the periphery which opted for other organisations such as the European Free Trade Association or the Soviet-led Council for Mutual Economic Assistance.

²⁵ M. Haynes & K. Pinnock, 'Towards a Deeper and Wider Union?', *Economic and Political Weekly*, February 21, 1998, pp. 415-430.

European Communities had doubled from 6 to 12 via three enlargements (Table 2.2.). The significance of the alternative forms of regional integration had started to lose out to the European Communities, which had begun to attract more members.

At the same time the process of deepening of the integration followed a peculiar pattern. Despite being a predominantly political project, the first two decades of the development of the European Communities were driven by the idea that economic integration would lead to political integration (also known as a ‘spill over’ effect), which would both help keep peace in Europe.²⁶ Initially set up as a merger of the

Table 2.2. ‘Widening’ of the European Union

| Year | Members increase to | Countries |
|-------------|----------------------------|---|
| 1957 | 6 | Original members (Treaty of Rome): Belgium, France, Germany, Holland, Italy, Luxemburg |
| 1973 | 9 | Denmark, Ireland, UK (Norway rejected membership in a referendum) |
| 1981 | 10 | Greece |
| 1986 | 12 | Portugal, Spain |
| 1990 | 12 | First Eastern European enlargement via unification: Former East Germany |
| 1995 | 15 | Austria, Finland, Sweden |
| 2004 | 25 | First enlargement to include Eastern European states after negotiation; largest enlargement in terms of states, land and people: Cyprus, Czech Rep., Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia |
| 2007 | 27 | First enlargement to the Balkans: Bulgaria, Romania |

coal and steel industries of France and Germany, the European Community deepened through the establishment of a customs union, monetary system, development of

²⁶ There is no single theory which explains the drive towards integration in Europe and most European integration theories use a mix of political and economic reasons which pushed the states to integrate in order to readjust to the post-1945 period. A. Milward, ‘The Springs of Integration’ in P. Gowan & P. Anderson eds., *The Question of Europe*, London: Verso, 1997, pp.5-20, p. 6.

common policies (for example, the Common Agricultural Policy). From the 1980s, however, EEC functionaries started to expand the forms of integration to include more technical-political ones such as the Schengen Agreement (1985) for removal of border controls among some members, and the Single European Act (1987), which envisaged the incorporation of the European Political Cooperation into the European Treaties (Table 2.3).

Table 2.3. ‘Deepening’ of the European Union

| Year | Developments |
|-------------|---|
| 1951 | European Coal and Steel Community (ECSC). |
| 1957 | European Economic Community (EEC) – Treaty of Rome: establishing a customs union. European Atomic Energy Community (Euratom): cooperation in developing nuclear energy. |
| 1967 | Merger Treaty (Brussels): establishment of European Communities out of the three above. |
| 1979 | First elections for European Parliament. |
| 1985 | Schengen Agreement: establishing open borders and removal of border control between its member states (UK and Ireland opted out). |
| 1987 | Single European Act: establishing single European market and European Political Cooperation. Setting the aim for a Single Market by 1992. |
| 1993 | Maastricht Treaty: created the European Union (EU) and the Euro; the Three Pillars of the EU: 1) European Communities pillar; 2) Common Foreign and Security Policy (CFSP) or Second Pillar; 3). Justice and Home Affairs (JHA), the Third Pillar. |
| 1999 | Amsterdam Treaty: focus on security, citizenship and rights, increasing democracy. Launch of the Eurozone. |
| 2003 | Nice Treaty: amendment to Treaty of Rome and Maastricht Treaty – introducing amendments to the institutional structure. Some criticised the Treaty for deepening but not widening political power and creation of two-tier EU with more power to the original but not new Eastern European members. |

The reasons for the qualitative change in the development of European integration are complex. First, by the early 1980s the economic recession had had a negative

impact on the interest in further integration. But by late 1980s the Community had regained its appeal, which, according to some commentators, was caused by the initiative of the Commission for the removal of non-tariff barriers, i.e. border controls and technical regulations to trade, in 1985, which proved popular with national governments eager to find an outlet from economic problems. The European project became appealing again and this helped its institutions to gain more power and steer its further development:

This was all unpromisingly technical rather than visionary. But the Commission had carefully chosen an issue (maybe the one issue), which did not divide member states... The significance and effects of these largely symbolic changes were hugely hyped, and the Commission successfully created the impression that it was building Europe. Once it had captured the political initiative, the Commission was determined not to let go.²⁷

The period prior to the end of the communist regimes in eastern Europe was thus marked by a developing enthusiasm amongst European integrationist elites for seemingly ‘deepening’ the European Community, although this enthusiasm was lacking a precise vision as to what kind of deepening should be undertaken. There were a number of internal problems, mainly linked to the project for monetary union, which had provoked some political opposition in terms of it involving the promoting of a liberal market, which had the potential to increase inequality.²⁸ The schemes for deepening involved many different scenarios such as developing Schengen, ideas for common foreign policy, a possible European army or incorporation of the Western European Union into the EC, expanding the powers of the Commission, ideas of ‘social Europe’, and even a European constitution.²⁹

The development of European integration was led by Euroenthusiasts and the project was often out of touch with the mass of the population. Turnout in European elections was very low, and the member state Parliaments had little influence on EU

²⁷ T. Cutler *et. al.*, 1989, *op.cit.* p. 1-2.

²⁸ *Ibid.*

²⁹ These steps were taken with very differing views amongst the member states. For example, when Britain joined the ‘Common Market’ it had a referendum which people thought was about whether the country was about to enter a purely economic cooperation zone.

policy. These problems have led to accusations of the EU as a developing organisation which itself suffers from a recognisable ‘democratic deficit’. This democratic deficit is identified in terms of the institutional structure of the European Union, and not so much in the nature of the party system or government participation. However, it has haunted the development of the Union since its conception due to the fact that it was ‘driven by bureaucratic and policy objectives [and] the democratic representation and accountability followed rather than preceded these objectives’.³⁰ Subsequent EU treaties (and particularly the Lisbon Treaty signed in December 2007) have in fact addressed some of the issues raised by the ‘democratic deficit’ critiques of the EU, particularly the status of the institutions and the decision-making process.

The fall of communism further complicated the European integration project. This enabled the problem to be thought of in the early 1990s as a dilemma over whether to deepen *or* widen the EU so that it would incorporate the newly independent states in Eastern Europe. For some there was also the possibility of deepening *and* widening at the same time. The third option was backtracking and widening, which it could be argued was what was to some extent chosen. According to some theories, ‘widening’ moved to the centre of the EU’s agenda in the 1990s at the expense of ‘deepening’ mainly because of geo-political changes, i.e. the collapse of the Soviet bloc, but also due to an early 1990s economic recession caused by the unification of Germany, which halted integration, and the pressure from the UK who used the idea of ‘widening’ to prevent further integration against its interests.³¹ However, the option to widen towards Eastern Europe proved to be more complicated as this option created its own difficulties.

2.4. Enlargement in the 1990s

Initially, in the first years of the 1990s there was no consideration of widening towards ‘the underdeveloped, undemocratic, and in many parts, rather alien’ Eastern

³⁰ D. McKay, *Rush to union: understanding the European federal bargain*. Oxford: Oxford University Press, 1996, p. 123.

³¹ V. Linternier, ‘The economic implications of enlarging the European Union’ in N. Healey ed., *The Economics of the New Europe. From Community to Union*. London: Routledge, 1995, pp. 170-187.

Europe until a common interest in Eastern European enlargement emerged.³² There was the option to include the countries which already had the status of applicants: Turkey (1987), Malta (1990s), Cyprus (1991), Switzerland (1992 lapsed), of which Turkey and Cyprus had proved problematic due to internal political and economic problems notwithstanding the fact that the former had Islam as an official religion which created some political anxieties in Western Europe. On the other hand, not all Eastern European countries considered joining the EU at first and even throughout the 1990s sociological surveys show limited enthusiasm amongst the voters in some of them.³³ According to Haynes and Pinnock, ‘only in Romania, Poland and Slovenia and Bulgaria did 50 per cent say they would straightforwardly vote to join the EU’.³⁴ However, this ambiguous disposition was not limited to Eastern Europe as polls conducted in 1990 in Western Europe have indicated that the majority, around 69%, of the population were favourable to integration ‘largely on the grounds that it is a ‘good thing’ for their own country’ but a much smaller percentage, 14%, actually feel ‘European’ – an ideal supported mainly by those working in the European institutions.³⁵

The decision for an East European enlargement (leaving aside those areas of former Yugoslavia and Albania which, for different reasons, were excluded from the considerations of enlargement at this time, despite being physically closer, or indeed adjacent to, existing Western member states) faced a number of problems, which increased in the course of the 1990s. First, there was the problem of which countries to accept in the Union and how far eastwards the border of the EU could extend. Was Russia ever going to be part of the EU or stay at its fringe, or is Turkey part of Europe? Along these ideological lines, Eastern Europe was seen as belonging to a different type of Orthodox-Christian or Slav civilisation, a mix of states which emerged from the fall of former Ottoman and Austro-Hungarian empire, some with

³² W. Wallace, 2002, *op. cit.*

³³ The Central European countries showed immediate enthusiasm for joining the EU in comparison to the former Soviet Union and some of its satellites such as Bulgaria where in early 1990s there was no consensus for EU membership due to fear of loss of Soviet markets.

³⁴ M. Haynes & K. Pinnock, *op. cit.*

³⁵ R. Bellamy, & D. Castiglione, ‘Between Cosmopolis and Community: Three Models of rights and democracy in the European Union’ in D. Archibugi, D. Held & M. Kohler eds., *Re-imagining Political Community*. Oxford: Polity Press, 1998, p. 167. The support for the EU because it is a ‘good thing’ is one of the revealing aspects of the process of European integration, which may explain its constraints as well as the course of development.

more backward/agricultural economies, which, similarly to Russia developed capitalism later than the West.³⁶ Eastern Europe was perceived as different and backward, lacking markets and democratic traditions, and strong institutions to develop such traditions because of their transitional status. Furthermore, the calculations for accepting the Eastern European applicants in 1996 showed that these countries would add approximately 105 million people, or 28% of the EU population but adding only between 3.4 % and 8.5% to EU GDP which would lead to the average EU per capita GDP dropping by around 15%.³⁷ Apart from these economic considerations, some saw the Eastern enlargement as a difficult project in terms of restructuring institutions, which have developed for centuries. Romano Prodi expressed this concern ten years after the decision to expand in Eastern Europe:

[M]ost people tend to compare the EU with the USA, which when it was founded had both a constitution and established public institutions. Every time the question arises I content myself by saying that when the time came for America to expand, the exhortation of the men at the top was, 'Young man, go west!'. That's how the country expanded to become what it is now. But all they encountered were bison and barren mountain ranges. What we are up against are settled and fully developed nation-states, great countries that can look back on thousands of years of unbroken history. Some of them, among them Hungary and Poland, have a longer history than the founder members themselves. Hungary is in fact older than Italy.³⁸

Despite all these concerns, by 1993-4, a decision was taken to expand eastwards. The formal decision and the negotiation of entry conditions for the six Eastern European countries which had signed Europe Agreements by that stage – Poland, Hungary, Czech and Slovak Republics and Bulgaria and Romania – was taken at Copenhagen Council in June 1993.³⁹ The Copenhagen conditions were divided into political and

³⁶ See for example S. Huntington, *The clash of civilizations and the remaking of world order*. New York: Simon&Schuster, 1996. For a critique of this view with a focus on the Balkans see M. Todorova, *Imagining the Balkans*. Oxford: Oxford University Press, 1997.

³⁷ A. Smith, et al., 2001, *op.cit.*

³⁸ R.Prodi & T. Øra, 2003, *op. cit.*

³⁹ Europe Agreements were signed with Poland and Hungary in 1991, followed by the Czech Republic, the Slovak Republic, Romania and Bulgaria in 1993, Estonia, Latvia and Lithuania in 1995

economic requirements. The political requirements asked the candidates to achieve stability of institutions guaranteeing democracy, the rule of law, human rights, and the respect for and protection of minorities. The economic criteria were defined by the existence of a functioning market economy and the capacity to withstand competitive pressure and market forces within the Union. Furthermore, other obligations required: fulfilling the aims of the political, economic and monetary union; the adoption of the EU *acquis communautaire*, i.e. European Communities law; administrative capacity to apply the *acquis*.⁴⁰

The EU itself took on the responsibility to develop an ability to absorb new members while the actual decision to start negotiations was postponed to 1996-7. This left both sides in an indeterminate state as to the actual pace of enlargement considering that even if a date of negotiations was set, these had previously taken different length of time (13 months for Austria, Sweden and Finland but 7 years for less economically developed Spain and Portugal).⁴¹ According to some observers, such as Christoph Bertram, the postponing of decisions about the future of Eastern Europe in the EU was in the early 1990s a sign of the caution of the Western leaders against taking on any serious obligations and responsibilities in Eastern Europe, after the initial excitement caused by the fall of communism had settled.⁴² Furthermore, as Wallace notes, the EU interest in the Eastern European enlargement was mainly ideological and provoked by a rising feeling of duty or patronage:

In the course of 1990 there was a good deal of Western political rhetoric about promoting democracy. This was partly honest sympathy for

and Slovenia in 1996. These agreements did not break ground for East-West relations. Economic agreements between these countries and the EEC had already been signed before the end of communism – a Trade and Cooperation Agreement with Hungary (signed in 1988), and Poland, the Czech and the Slovak Republic (1989) to remove EC quotas on imports from Eastern Europe by 1995. The fall of communism in these countries and German unification opened a possibility for the EU to go beyond liberalisation and use enlargement to secure political stability in the region.

⁴⁰ *Acquis communautaire* or just *acquis* is the status quo EC law at the moment of accession and has been considered a key tool for integration, used in all enlargements. It ensures that the new Member States are subject to the same obligations as the original Member States.

⁴¹ W. Wallace, 2002, *op. cit.*

⁴² C. Bertram, *Europe in the balance: securing the peace won in the Cold War*, Carnegie Endowment for International Peace, 1995. According to Bertram, the EU introduced the interim Association Agreements, and NATO developed its Partnership for Peace framework, in order to ‘gain time’ and fend off pressure for accession from more states. These agreements were based on pre-existing trade liberalisation plans with some central European states agreed before the end of communism. They can be seen as an intermediary stage between economic and political enlargement.

inexperienced peoples struggling to create unaccustomed representative systems. But it was also propaganda intended to reinforce Gorbachev's attempts to liberalise Soviet politics. This then produced an ill-defined discussion of East European security; and the question was even raised as to whether enlargement would be of any assistance.⁴³

From the point of view of the Eastern European states, the accession to the European Union was no less a political move. There were potential trade gains from membership, especially for weaker states that had started to lose their economic sovereignty due to expansion of world markets in the 1980s-90s and which perhaps saw the EU as a way of regaining control.⁴⁴ Membership of the EU offered the advantage of participation in a bigger market with free movement of labour and capital, unified trade policy towards third countries, participation in a monetary union, and lastly, the immediate benefits from participation in the common policies such as the Common Agricultural Policy (CAP) with its agricultural subsidies, regional, industrial, social policy, with their small but attractive development funding, and attractiveness for more foreign investment.

However, the evidence from previous 'widening' exposed a new set of problems as 'enlargement involving the accession and assimilation of dissimilar economies [tends] to be more problematic in terms of welfare enhancement'.⁴⁵ Enlargement *per se* was not necessarily a cure for the Eastern European states but nevertheless it was possible that it could provide a 'quick fix', mainly through the flow of foreign investment. In the early 1990s there was no clear idea as to how the potential Eastern European 'accession states' were going to achieve the conditions for membership so that they would benefit from, rather than lose from, joining the much more economically advanced common market of the European Union. Therefore the 'selling' of the accession 'project' to the Eastern European electorates proved a difficult task especially in some of the candidate counties as it involved a much more complicated readjustment, as well as increased burden on the state budgets.⁴⁶ The

⁴³ H. Wallace, 2001, *op. cit.* p. 7.

⁴⁴ Linternier, *op.cit.*

⁴⁵ *Ibid*, p. 175

⁴⁶ It is important to note that the EU does not explicitly require privatisation and it does not dictate rules on ownership and privatisation but the latter has been the main economic policy in almost all

existing member states also had difficulties choosing widening over deepening as there was opposition to abandoning the ideas of further economic and political integration, and the risk of taking on countries with much less developed market economies. Nevertheless, the mid-1990s marked the beginning of building a consensus on widening the EU by both sides involved in the project. The ‘deepening’ was not entirely abandoned but reformulated in increasing emphasis on the development of the so-called Three Pillars of the EU after 1993. The Maastricht Treaty created a Common Foreign and Security Policy (CFSP) and Justice and Home Affairs policy (JHA), though it is arguable whether these policies are actually examples of ‘deepening’ or ‘widening’ as the degree to which real sovereignty transfers are involved is contested.⁴⁷

The European Council conferences after Copenhagen developed further an accession strategy for the Eastern European candidates and Cyprus and Malta which were included in the process in 1994. The strategy was formally based on a structured dialogue, but the task of monitoring the process of the adoption of the membership requirements was given to the European Commission. The Commission acquired asymmetrical power in relation to the applicants as the leading EU institution, which had the task of preparing a composite paper on enlargement and opinions on the applications.⁴⁸ The opinions of the Commission on the progress of the applicants and the new Agenda 2000 adopted in 1997 added new elements to the enlargement process: its financing and effects, and its split into two phases. The Commission divided the group of the 10 applicant countries into two groups: first wave countries including Estonia, Poland, Slovenia, the Czech Republic, Hungary and Cyprus, and a second wave included the rest.

post-communist countries. However, the issue of state subsidies is dictated by EU rules – and public companies very often do not exist without state subsidies; thus public ownership is limited to those companies which can survive without significant state support. The need for new investment often requires privatisation too (or rather takeover of local national firms by larger Western ones).

⁴⁷ JHA was later changed to Police and Judicial Cooperation in Criminal Matters (PJC) with the Amsterdam Treaty (1999) which moved some of the JHA areas of cooperation into the first pillar (e.g. asylum and immigration). However, JHA has remained in use after 1999, especially in the enlargement process (e.g. Bulgaria’s negotiations on Chapter 24 JHA), and therefore this thesis uses the term JHA in reference to events which occurred after Amsterdam.

⁴⁸ With the exception of Slovakia all the applicant countries satisfied the political conditions for membership but Bulgaria, Latvia, Lithuania and Romania needed to make further progress in economic reform and the adoption and implementation of EC laws.

It can be argued that since the mid-1990s the EU began to define itself by the process of enlargement and the development of norms for 'New Europe' at the expense of other more difficult decisions. The attempts to introduce more reforms in the EU instructions with the new Amsterdam Treaty and intensify the 'deepening' of integration had had only limited success.⁴⁹ At the same time, the decision for opening negotiations was taken as early as 1997 at the European Council in Luxembourg (with Cyprus, the Czech Republic, Estonia, Hungary, Poland and Slovenia, which started negotiations on 31 March 1998), and new and more elaborate strategies for accession were developed.⁵⁰ These included the so-called Accession Partnerships adopted in 1998 in order to increase the participation of the applicant countries in the process (but still dictated by the Commission), and reinforce the applicants' ability to apply the EU agenda through strengthening their institutional and administrative capacity, i.e. a policy of 'institution building'.⁵¹ Each of the ten applicants had set the priorities and intermediate objectives from the short-term and medium-term in the fields of economic reform, reinforcement of institutional and administrative capacity, internal market, justice and home affairs and environment. This participation on the part of the applicant state was realised through a so-called National Programme for the Adoption of the Acquis (NPAA), which every applicant country was required to set up. However, the transfer of more control to the applicants in formulating their specific accession needs did not create any qualitative transfer of real power to influence the negotiations even though the Partnerships created the impression of a more equal process. In effect the agenda was still set by the European Commission and the NPA only gave freedom to present what each country needs in order to comply.⁵²

⁴⁹ The new developments were mainly concerned with establishing a new ethical ground for integration, i.e. enhancing the human rights regime, and an increased focus on security, citizenship and rights, democracy, etc.

⁵⁰ Latvia, Lithuania, Malta, and Slovakia were invited to accession negotiations in 2000. Bulgaria and Romania, were included in on condition of fulfilling the economic criteria. The accession negotiations were formally launched with Romania, Bulgaria, Slovakia, Latvia, Lithuania and Malta on 15 February 2000.

⁵¹ Institution building was the new focus of the enlargement process, adopted in Agenda 2000. It is described as 'developing the structures and systems, human resources and management skills needed to implement the *acquis*.' European Commission, *Twinning in Action*. European Commission Enlargement Directorate General, October 2001 [online] <http://europa.eu.int/comm/enlargement> accessed 30/11/2006.

⁵² The applicant countries' agenda was in fact 'accession agenda' rather than development and growth agenda. For a commentary on this issue, see *EU Conditionality in the Balkans*. Background paper of SEE Program's Workshop, St Antony's College, University of Oxford, November 2002; <http://www.sant.ox.ac.uk/areastudies/conditionality.htm> accessed 07/08/2008.

Finally, a new approach was adopted in 1998 aimed at facilitating the institution building of the candidates called a ‘Twinning’ programme. The programme aimed at transferring technical and administrative know-how from the Member States to the applicant countries in four key areas: agriculture, environment, finance, justice and home affairs, financed through various EU programmes: PHARE (discussed earlier in this chapter), Leonardo, Erasmus and Socrates.⁵³ The key element in the programmes was the so-called twinning strategy (linked to the idea of capacity or institution building) in the applicant countries. The rationale behind it was the identification of a new problem, namely that these countries lacked an adequate capacity to prepare for European integration. Around 30 percent of the PHARE budget was prescribed for institution building and the rest for investment support.⁵⁴ The bulk of instruments developed to manage enlargement during the 1990s is impressive. Apart from the initial and basic Europe Agreements it expanded to include Decisions of the Association Councils, the Accession Partnerships, Agenda 2000, the White Paper of the Commission, the Regular Progress Reports of the Commission, the Screening Reports and the National Programmes for the Adoption of the *Acquis*, PHARE, Twinning as an Instrument for Institution building and the participation of the CEE countries in Community Programmes like Tempus, Socrates and Leonardo and the regional funds ISPA (Instrument for Structural Policies for Pre-Accession) SAPARD (Special Accession Programme for Agriculture and Rural Development).

In ideological terms the Eastern European enlargement was pictured as involving more than just a ‘widening’ of the EU. It was part of another 1990s process of constructing the Union as more than a sum of its member states and developing an added value to it; a superstructure with its own identity and power. At the European Council conference in Turin in March 1996, the Member States stressed that:

⁵³ Many EU member states retained their own bilateral programme within eastern Europe which were also designed to support both bilateral ties but also EU accession process e.g. The British Know How Fund administered through the British Embassy in-country. Similarly UNDP operated towards EU accession approach attracting both EU and global funds (i.e. Japan).

⁵⁴ A. Bothorel, ‘The history and development of the PHARE programme’ in *Overview of the Phare Programme and the New Pre-Accession Funds*. Proceedings of a seminar held in September 1999 at the EU Information Centre in Budapest [online] <http://europa.eu.int/comm/enlargement/pas/phare/publist.htm> accessed 21/12/2006.

[The] future enlargement, which represents a historic mission and a great opportunity for Europe, is also a challenge for the Union in all its dimensions. In this perspective, institutions, as well as their functioning, and procedures have to be improved in order to preserve its capacity for action, while maintaining the ‘acquis communautaire’ and developing it and also respecting the balance between the institutions. It is essential to sustain the very nature of European construction, which has to preserve and develop its features of democracy, efficiency, solidarity, cohesion, transparency and subsidiarity.⁵⁵

Although not explicitly acknowledged, the Eastern European enlargement had a second dimension which can be described as a ‘member-state building’ policy.⁵⁶ The use of enlargement as a tool of re-defining the role of the Union in ‘New Europe’ and the so-called ‘New World Order’ has also developed as an alternative for the much more difficult process of ‘deepening’ the integration. In this respect, the other projects, which the EU engaged in during the 1990s such as CFSP and JHA, were a similar departure from earlier plans for organising the EU as a federal state-like structure, which provoked the difficult federation debate or the constitutional debate. What connects all these projects within the EU project itself are the efforts to develop a distinctive European identity, based on universal values and norms, and the ‘soft’, ‘civilising’ power of the EU. This idea was the key factor in the development of the political Union in the 1990s, although the promotion of values as opposed to enhancing equality has opened a new debate of the diminishing political value of the EU.⁵⁷

2.5. Political Union and the EU Pillars approach

The ideas of developing a formal political dimension to the Community, and particularly a foreign policy aspect within the context of earlier enlargements, had

⁵⁵ Turin European Council, 29 March 1996 Presidency Conclusions [online]

<http://www.dpt.gov.tr/abigm/abtb/Zirveler/1996%20Turin%2029%20Mart.htm> accessed 8 July 2008.

⁵⁶ G. Knaus & M. Cox, ‘The ‘Helsinki Moment’ in South-eastern Europe,’ *Journal of Democracy*, 2005. vol. 16, no. 1, pp. 39–53.

⁵⁷ See for example D. Chandler, ‘Hollow Hegemony: Theorising the Shift from Interest-Based to Value-Based International Policy-Making’, *Millennium: Journal of International Studies*, vol. 35, no.3, September 2007, pp. 703–723.

existed from the outset of European integration.⁵⁸ It did not materialise in earlier periods although political integration was seen as the primary aim of the European project and indeed all treaties could be interpreted as having ‘political value’. This political aim was stated as early as 1956 by Walter Hallstein, the German State Secretary between 1956-58, and President of the European Commission between 1958-1967:

In the interest of our freedom and culture – the freedom and culture of the West – we must insist on and give priority to political integration and regard any form of economic part integration as a mere stage on the road to it. I do not in the least wish to deny or even underestimate the value of economic integration. But, the realisation that, for instance, the Common Market, quite apart from its political value, would constitute an economic advance, must not induce us to lose sight of our political goal. Strictly speaking, any sharp distinction between politics and economics at this level is quite without point. And, certainly, no such distinction was intended by or would be compatible with the Messina Resolutions, as the plan to set up a European Atomic Authority shows, a plan the significance of which goes far beyond the economic sphere.⁵⁹

There were early attempts to develop military integration during the 1950s and 1960s. These included the project for European Defence Community (EDC) devised in 1950 as part of the integration process but it failed French ratification, and the Fouchet Plans, initiated by France with a more intergovernmental framework in mind which were also unsuccessful. Neither of these led to the development of a common policy within the EEC but led to a series of meetings on EPC with the participation of the Commission in the period between 1970-1981, and of EC trade and aid policy instruments by EPC in the 1980s (such as sanctions against the USSR and Poland).⁶⁰ On the other hand, some significant political cooperation was in fact taking place following routes outside of the European Community. This had a primarily military

⁵⁸ Communiqué of the meeting of Heads of State or Government of the Member States at The Hague (1 and 2 December 1969) [online] <http://www.ena.lu/> accessed 10 July 2008.

⁵⁹ W. Hallstein: the FRG and European integration, Bonn, 14 May 1956 [online] <http://www.ena.lu/> accessed 10 July 2008.

⁶⁰ G. Edward & S. Nuttall, ‘Common Foreign and Security Policy’ in J. Pinder & R. Pryce eds., *Maastricht and Beyond. Building the European Union*. London: Routledge, 1994.

outlook due to the geopolitical conjuncture at the time. The division into East-West military blocs, the increased power of the US to influence European affairs after the Second World War, as well as the weakness of the European states internally and externally at the time precluded any independent moves in the direction of actual military or political integration. Most Western European states became members of the North Atlantic Treaty Organisation (NATO) established in 1949 as a Western military defence organisation under American leadership, and the Western European Union (WEU) set up in 1948 which had no military capabilities but played a significant political role during its existence.⁶¹ There were also attempts to create a so-called European wing within NATO, which developed into a European Security and Defence Identity (ESDI) during the 1990s when some Western European states started to press for a more different role for Europe, distinct from American power. Additionally, the establishment of the Conference on Security and Cooperation in Europe (CSCE) in 1973 which later transformed into Organisation for Security and Cooperation in Europe (OSCE) can be seen as part of an attempt to develop forms of European political cooperation.

A foreign policy cooperation was more difficult to formalise with the European Communities until the late 1980s when such cooperation was for the first time officially codified as part of the integration by the Single European Act (1987). However, it was not until a few years later that some real progress in the area of EPC was made considering the largely rhetorical use of EPC in the previous four decades. In the 1990s the French and German leaders Mitterrand and Kohl sent letters to the Irish presidency 1990 asking for an intergovernmental conference (IGC) to discuss the development of a political union.⁶² There were efforts in the same direction from the Belgian government. According to Edwards and Nuttall, the reasons for this diplomatic upsurge were ‘the changes in Europe and German unification, above all

⁶¹ It facilitated the inclusion of Germany and Italy (who became members in 1954) back into the European ‘family’ by decreasing the military anxieties and suspicions against those two countries after the war. In the post Cold war period, the WEU had an important political role in creating links with Eastern Europe. However, it was called the ‘sleeping beauty’ of Europe because of its lack of military capabilities and limited activities. It was integrated into the EU by the Amsterdam Treaty and charged with the execution of so-called Petersberg tasks (humanitarian, peacekeeping and peacemaking tasks). It was later dissolved as the EU developed its Common Foreign and Security Policy.

⁶² F. Laursen, F. & S. Vanhoonacker eds., *The Intergovernmental Conference on Political Union: Institutional Reforms, New Policies and International Identity of the European Community*, Maastricht and Dordrecht: EIPA Martinus Nijhoff Publishers, 1992.

[when] the need for greater convergence of policy was accepted and compromise made possible on defining a common foreign and security policy and the ways in which it might be implemented'.⁶³ In this way, the ICG agreed to transform the political cooperation into a Common Foreign and Security Policy (CFSP) as established by Title V of the Maastricht Treaty in 1993, as the second pillar of a unique combination of supranational and intergovernmental structures, or a so-called 'three-pillar temple':

Figure 2.1. The European Union 'Temple' and Pillars



The changes in Eastern Europe have been a trigger but not the main motivation for the development of the political union, and according to Edwards and Nuttall the negotiations for the CFSP 'were for the most part not much influenced by outside events'.⁶⁴ The JHA pillar was particularly problematic as it had a direct effect on state sovereignty in sensitive internal affairs and therefore was limited only to areas of which the member states would agree to cooperate. Additionally, the development of a pillar system with combined supranational and intergovernmental areas of responsibility and action added further inconsistencies and made the functioning of all pillars more complicated, and sometimes counter-productive especially in overlapping areas. In the case of foreign policy, for example, the second pillar had no exclusive prerogative in the area of external relations. The intergovernmental

⁶³ G. Edward & S. Nuttall, 1994, *op. cit.*, p. 84. According to the authors, there was rising concern that the EC could not manage with the Eastern European challenges but there was a more important fear that after unification the German people would lose interest in integration in the West and Germany will resume its position of 'an autonomous Central European power' which it had been before the Second World War. *Ibid*, p. 87.

⁶⁴ G. Edward & S. Nuttall, 1994, *op.cit.*, p. 88. The authors argue that there was no clarity on the actual implementation of the political union or the CFSP, and in fact the EU member states were split into pro- and against- strong common policy camps with different line-ups depending on the issue concerned, and issuing 'a confusing mass of proposals and counter-proposals'. *Ibid*, p. 87.

institution of the European Council still had power in this area, and some of the third pillar covers external issues such as immigration policy. Furthermore, some foreign policy instruments were linked to the first pillar (such as use of economic sanctions, trade); and some developments in the third pillar were effectively a form of foreign policy (such as demands for anti-crime measures in third states).

The pillar structure did not create a very smooth framework for common policies or a form of single governance as expected from a political union or federation and in fact increased the role of national governments in the Union through its intergovernmental framework of cooperation.⁶⁵ The paradox of these developments, also known as ‘capability-expectations gap’,⁶⁶ was that the EU members demonstrated an unprecedented enthusiasm for a Common Foreign and Security Policy, but the actual arrangements agreed in the early 1990s created much ambiguity and difficulties for the actual functioning of it. However, they established some basis for developing an extent of convergence of positions in areas of internal and external affairs (often at the ‘lowest possible denominator’) which in practice achieved an internationally recognized status of the EU as single political entity. Furthermore, the developments in the area of EPC in the 1990s also laid the basis for a specific role for the EU on the international arena, with the status of a ‘civilian’ or normative power, capable of providing security through the promotion of alternative and more progressive approaches.

2.6. Normative union

One of the important aspects of the European political cooperation in the 1990s was what was considered as the development of ‘the civilian power’ of the Community emerging through EPC’s and CFSP’s ‘high politics’. This development has some relevance to the idea of ‘New Europe’ described in a previous section, i.e. the establishment of the EU as ‘normalising’ factor in Europe in the post-Cold War era. According to Smith:

⁶⁵ For further elaboration of the theory of strengthening the domestic actors through EU integration see A. Moravcsik, *Why the European Community Strengthens the State: Domestic Politics and International Cooperation*, Centre for European Studies Working Paper Series, Harvard University, 1994, no. 52.

⁶⁶ M. Smith, ‘The EU as an international actor’ in J. Richardson ed., *European Union. Power and Policy Making*. London: Routledge, 1996, p. 252.

Not only was the Community seen as ‘civilian’, it was also ‘Western’ in its orientation, an integral part of the transatlantic system centred on NATO, the GATT, the Organisation for Economic Cooperation and Development (OECD) and other institutions. This set of strong institutional affiliations largely defined the arena of EC activity. Alongside it went the still strong links to former colonial possessions of the EC members... The EC’s arena of action, its main reference point for any sort of international identity, was the Western system and in particular the economic structure built around the North Atlantic area.⁶⁷

The distinctive role of the European Union in the North Atlantic Area has been increasingly conceptualised as more of a ‘soft’ power or an alternative to the traditional ‘hard’, coercive or military power of the state. First, the Western European states did not manage, for various reasons, to develop independent military capabilities in any of their international structures, including the Western European Union, which was defined as a military security organisation. According to Manners, the introduction of the three-pillar structure of the EU was in fact an attempt to shift from civilian to military power and the CFSP was expected to ultimately include a defense policy which did not materialise in the way that it was expected.⁶⁸ This can be interpreted as one of the reasons why the EU developed an alternative interpretation of its role in ‘soft’ security as a ‘soft’ power.

Secondly, during the 1990s in Europe, some states felt internal and external pressure to have a more prominent international role, which they chose to define through the European Union.⁶⁹ This pressure was partly linked to need to disassociate from the ‘hard’ American policy without disengaging with the US normatively, but also from the problems, which emerged in Europe, namely the violent disintegration of Yugoslavia, which Western Europe failed to handle.⁷⁰ And thirdly, the EU itself

⁶⁷ *Ibid*, p. 253-4.

⁶⁸ I. Manners, ‘Normative Power Europe: A Contradiction in Terms?’, *Journal of Common Market Studies*, 2002, vol. 40, no. 2, pp. 235–58.

⁶⁹ Germany, which was banned by its own constitution from overseas military action may have seen the EU as a route to expanding its foreign policy powers.

⁷⁰ Edwards and Nuttall note that it is ‘a problem inherent in the foreign policies of many Western liberal democracies that they inevitably fail to react to new foreign policy problems and try to treat

needed an identity and ability to project a post-modern power in Europe and the world, and the choice to go for a 'soft' approach to international issues was earning more legitimacy and popular support since the end of the military rivalry of the Cold War era.

The normative (soft) civilising power, which the EU began to claim in the 1990s thus involved an aspiration that went beyond addressing the concept of the self-interest of the sovereign state. The EU claimed to be participating in the building of a global normative regime which is needed in order to meet the 'new' challenges, and more importantly – pro-active rather than reactive policies. As Manners observed, 'the construction of the EU is not just a European project – it is part of a global effort to coordinate and reconcile human differences under conditions of globalisation.'⁷¹ In the introduction to a book which aims to challenge the political concepts of the past, the editors Daniele Archibugi, David Held and Martin Kohler elaborated on the need for re-adjusting these concepts to the new conditions due to the progress of globalisation and the end of the Cold War:

The nuclear confrontation between West and East, between capitalist democracy and Soviet communism, is a thing of the past. However, that does not mean that war is no longer used to solve controversies or that states have stopped squabbling over political hegemony... There is no guarantee that new and stronger conflicts will not break out between rival areas of influence. In different historical conditions, and among different geographical and political areas, forms of international conflict no less intense than those we have seen are still possible. The end of the Cold War must be seen as an opportunity for creating a more progressive stable system of interstate relations.⁷²

them only after they have occurred, usually amid considerable publicity and criticism that they should have had contingency plans for such an event'. G. Edward & S. Nuttall, op.cit. p. 101. The wars in Yugoslavia were the most painful example for the lack of consistency in the Western approach, which was much criticised in the media and academia.

⁷¹ I. Manners, 'The European Union as a Normative Power in the Global Polity', Paper presented to the PSA Annual Conference, Leeds, 2005, p. 3.

⁷² D. Archibugi, D. Held & M. Kohler eds., *Re-imagining Political Community*. Oxford: Polity Press, 1998, p. 2.

Apart from war, the new challenges are of various natures, and often subjectively defined. According to Held these include: the spread of AIDS, the debt burden of many countries in the 'developing world', the flow of financial resources which escape national jurisdiction, the drugs trade and international crime.'⁷³ The EU and its member states officially endorsed the same themes, which they saw as stemming from the irreversible process of globalisation and its effect on the nation-state and its traditional forms of self-preservation:

The post Cold War environment is one of increasingly open borders in which the internal and external aspects of security are indissolubly linked. Flows of trade and investment, the development of technology and the spread of democracy have brought freedom and prosperity to many people. Others have perceived globalisation as a cause of frustration and injustice. These developments have also increased the scope for non-state groups to play a part in international affairs. And they have increased European dependence – and so vulnerability – on an interconnected infrastructure in transport, energy, information and other fields.⁷⁴

Moreover, the EU's endorsement of global challenges was part of the development of a new international regime on new types of security, such as human security as promoted by the UN, which is seen as challenged by: unchecked population growth, international terrorism, migration pressures, and disparities in economic opportunities, drug trafficking, and environmental degradation.⁷⁵

The use of the rhetoric of global challenges is not a new phenomenon in Europe but it is qualitatively different from previous claims of world interests. Traditional 'global challenges' or global interests involved the clash of state interests of state powers – for example Britain's global interests as opposed to America's regional

⁷³ D. Held, 'Democracy and Globalisation' in D. Archibugi, D. Held & M. Kohler eds., *Re-imagining Political Community*. Oxford: Polity Press, 1998, pp. 11-27. p. 12.

⁷⁴ *A Secure Europe in a Better World*, European Security Strategy, Brussels, 12 December 2003 [online] <http://ue.eu.int/uedocs/cmsUpload/78367.pdf> accessed 20/03/2007.

The key threats listed in the document are a combination of new and old, internal and external anxieties such as: terrorism (post September 11), proliferation of weapons of mass destruction, regional conflicts, state failure and organised crime.

⁷⁵ United Nations, *Human Development Report 1994. New dimensions of human security*, 1994, p.13 [online] <http://hdr.undp.org/en/reports/global/hdr1994/chapters/> accessed 13 July 2008.

interests or American global interests versus those of the USSR.⁷⁶ However, in the 1990s the rhetoric on global issues suggested the need to create a new normative regime, based on *universal values* and not conflicting *state interests*.⁷⁷ Although the EU did not initially display the ambition for externalising its normative commitments in the course of the post-Cold War period, it increasingly linked its developing foreign policy to the promotion of global interests within the region of Europe.

The debate on the 'alternative' role of the EC/EU in international affairs as replacing the role of the state can be traced back to the 1970s and 1980s but in that period the limited political integration did not provide enough basis to claim that the civilian power of the EC was independent from the military power of states.⁷⁸ The intensification of the integration process and the development of a political aspect to the EU in the 1990s however, resurrected the debate on soft power, i.e. the ability of the EU to diffuse norms internally and externally through influencing the decision-making process and acting as a deterrent or 'civilising' the behavior of third states through enlargement and/or use of diplomacy.⁷⁹ The development of this kind of power is linked to the identification of new threats which, it is claimed, cannot be dealt with by traditional, or military power but requires international, or global cooperation. This argument was also taken up and supported by the political leaders in the applicant countries. According to Hungarian Minister Janos Martonyi speaking on the future of Europe at the informal meeting of the foreign ministers of the European Union, he said ('[there is] not much time left to create a really united, enlarged Europe. Global challenges do not only make this unavoidable, but urgent as well.'⁸⁰

⁷⁶ D. Reynolds, 'From World War to Cold War: the wartime alliance and post-war transitions, 1941-1947', *The Historical Journal*, 2002, vol. 45 no. 1, pp. 211-227.

⁷⁷ In the post World War 2 period the US always claimed to be fighting for global freedom and democracy – not just for the interests of the USA. Similarly the USSR claimed to be fighting for international socialism and peace.

⁷⁸ H. Bull, 'Civilian Power Europe: A Contradiction in Terms?', *Journal of Common Market Studies*, 1982, vol. 21, no. 2, pp. 149-64.

⁷⁹ This has been accompanied by a burgeoning literature on Europeanisation, or the process of state socialisation through the EU.

⁸⁰ Martonyi refers to the problem of terrorism post September 11, cited in J. Sedivy, P. Dunay & J. Saryusz-Wolski, *Enlargement and European defense after 11 September*, European Union Institute for Security Studies, 2002 [online] <http://aei.pitt.edu/515/01/chai53e.pdf> accessed 14 June 2007.

2.7. Conclusion

This chapter presented the emergence of new international settings during the 1990s, which opened possibilities for the European Union to take centre stage in the building of 'New Europe'. The extent of these structural changes was surprising not only because the collapse of the Soviet Bloc in the late 1980s was unexpected but also because the future of the European integration and the European Community was unclear at the time. The process of integration had stalled by the early 1980s and the ideas of its 'deepening' or 'widening' in order to improve the EC prospects were being met with increasing Euroscepticism, and the once popular theories of European economic and political integration faced difficulties in explaining their object of study.⁸¹ Then, the sudden increase in the political support for developing the European Union after the Single European Act was also a subject of much controversy as to what lies behind the new plans for the EU. The European Union was seen a façade for the liberalisation projects of national governments, or a defence of national economies in the fast developing globalisation and external economic pressures, or simply a form of competing with the US – and other regional blocs such as China, India, Japan and the Soviet Union. In the late 1980s however there was limited little political will to develop the Union into a superstate, and all plans for developing the Union in this direction (supported by Germany and France) faced opposition by other member states.

The fall of communism in Eastern Europe in 1989-91 created a completely different picture. The demise of the Soviet Bloc was greeted by the West and seen as a 'victory' for Western-style capitalism and democracy. Eastern Europe was seen as 'New Europe' where a transition to a market economy and democratic forms of government with strong institutions to support the rule of law and human rights would finally bring prosperity to this historically backward region, and help prevent future crises. In these conditions, the European Union was promoted as the new 'normalising' power in Europe, capable of guiding the newly independent Eastern

⁸¹ Euroscepticism developed in key countries like Britain who under Thatcher were rejecting many of the moves towards integration and social policies in favour of free trade, privatisation, and a rejection of the perceived pseudo-socialist policies emanating from Brussels at the time – paradoxically the same right-wing policies which the EU would later endorse and hoist onto the enlargement process in eastern Europe in the late 1990s.

European states to this end. This was formulated as the new role for the EU as it endorsed both widening – mainly to the East – and deepening by opening new areas of cooperation: foreign and security policy, as well as internal security and home affairs with a focus on fighting organised crime.

The discussion in this chapter showed the complexity of issues surrounding the development of the new anti-crime regime in Europe. There are two key factors which led this development, and these were the idea of transforming EU as a central political actor in Europe and the world, and the need for its member states and satellites (including future members) to be participating in a joint effort of promotion of new superior set of ‘post-modern’ policies. The convergence of these two factors brought about a re-energised European Union and a new form of state intervention, not through military roles but through anti-crime and ‘soft security’ functions.

Chapter 3. From Hard Security to Soft Security and the ‘Organised Crime Threat’

3.1. Introduction

This aim of this chapter is to explore the debates in international relations and security studies in order to trace the theoretical circumstances in which organised crime became part of the European Union’s agenda. The chapter focuses on two developments: the challenges to traditional military understanding of security which became increasingly popular in the post-Cold War period, and the subsequent re-invention of security through the insertion of new threats such as organised crime into a new and expanded version of a ‘post-national’ and ‘post-sovereignty’, or post-modern, security theory. In the 1990s the ideas of the EU as a soft security provider became popular (without replacing the hard power ambitions of the EU) and led to the development of a number of policies, which drew from the strength of the challenges to both the theoretical and territorial boundaries of security and the blurring of the distinction between military and non-military, old and new, hard and soft, internal and external security. Furthermore, these new and ‘progressive’ policies were expected to help transform the EU into a stronger international actor by virtue of their added security value as we saw in chapter two. They are commonly grouped in two areas, or EU pillars: Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA) though the boundaries between these areas are also flexible and porous. The discussion in this chapter is concerned with the theoretical developments which informed the development of the JHA pillar, and especially the idea of organised crime as a threat to security within the EU and also to its international obligations affecting relations outside the EU.

After the end of the ‘mutually assured destruction’ of the nuclear rivalry between the United States and the USSR, the issue of international security did not disappear. In the practice of international relations many issues which were not previously considered a matter of security became ‘securitised’, and this included organised crime. Those issues which are not directly linked to traditional military, or ‘hard’

security, entered the debate as ‘soft’ or ‘new’ security. This was partly made possible because of the theoretical debates in the international relations circles where critiques of ‘hard security’ gained more intellectual recognition after the traditional realist theories seemed to be partly discredited by the end of the Cold War, which they had failed to anticipate. The new security theories became popular also because they undermined the centrality of the state in international relations after a process of a *deconstruction* of the security concept and its exposure as a tool of state power. Another set of new positivist theories grew out of this attack on the state and sought not to further deconstruct but *re-construct* security by drawing attention to previously ignored subjects in security theory, and placing them as core issues in a new ‘soft’ or non-military security agenda. It is both the challenge to a state-centred understanding of the world, as well as the proposing of a new and expanded security vision that has made these theories consistent with, and useful for, the idea of a post-Cold War New Europe and the construction of the EU as a ‘new form’ of post-modern and supra-state political structure.

The arguments in this chapter focus on identifying gaps and peculiarities in the development of the new security theories. The first part of the chapter discusses these new developments in security thinking and concludes that non-military or soft security is itself an even more difficult concept to define than the previously more clear-cut theory of military, state-versus-state security. The second part of this chapter focuses on why defining organised crime as a security threat appears problematic. It examines organized crime within a large body of criminological literature, going back at least a century, and exposes the highly controversial nature of the concept of organised crime itself. The process of simply transferring organised crime from criminology to international relations without considering these theoretical controversies, the chapter argues, may lead to unintended policy outcomes. From the perspective of international relations and power politics the most important of these outcomes is that soft security re-enforces rather than the challenges the existing power relations, which it initially set out to do. Additionally it poses the risk of further undermining less powerful states and their sovereignty from within as well as without.

3.2. From Hard Security to Soft Security

In international relations theory, soft security is usually defined either in opposition to hard security, or as complimentary to hard security. In its widest sense, soft security is everything *but* military security. If hard security is a public ‘good’ produced by means of confrontation and/or defence via the threat of use of military force or some other form of coercive power, soft security claims to create stability and avoid war through cooperation and other non-military measures. And if security is to be achieved not only through the use of military force then the soft security agenda addresses other types of risks. In the security continuum shown below hard security is mainly concerned with territorial defence against an outside aggressor while soft security lies at the other end of the spectrum where aggression could come from internal as well as external, non-state sources and requires the development of non-military policies.

Figure 3.1. The Conventional idea of a Security Spectrum

| Hard Security | Soft Security |
|--|---|
| External (military) aggressor | Internal/external non-military threats |
| Military response | Non-military tools |
| State army or military alliances | State’s or inter-state political, economic, social, environmental, public health policies |
| NATO, Warsaw Pact | EU, OSCE |
| (mix) Peacekeeping, peace-enforcing roles (UN) | |

This complex security structure has been the subject of the theory and practice of international relations since the end of the Second World War which brought about both the rise of nuclear superpowers and regional security alliances and the fall of colonial power and the emergence of a large number of independent new states. This in effect increased the number of security actors but also gave primacy to military or ‘hard’ security and their respective agents.

Hard security and international relations

The attention paid to soft security issues has been more prominent in the post-Cold war era but both hard and soft approaches to security existed before at the level of both theory and the practice of international relations although they were not necessarily seen as separate issues. Previous theories of war did not ignore the variety of issues behind the occurrence of war, and therefore they, too, have been concerned with the soft security problems which had lead to confrontation such as competition for resources, economic threats, environmental problems, and so on. Indeed, the division between hard and soft security had originally been constructed by mainstream (realist) international relations theorists who had taken states as their main unit of analysis and therefore equated security with war as the ultimate expression of the political relation between these political units.

The mainstream international relations and security theory reflected the ideological aspect of the post-war rise of the United States as a hegemonic power in the Western hemisphere; the demise of the colonial powers and the decline of the previous hegemony of Great Britain, and the rest of the European powers. According to Buzan and Wæver, 'the word security as such is old, but in the US in the 1940s "national security" became...the "commanding idea", the standard label for a whole field, previously discussed as war, foreign policy, defence, or military policy. It arrived with such force, that it seemed always to have been with us'.¹ After the Second World War security was highly militarised due to the devastating consequences of the war itself and the respective importance of the military circles in the high politics of both the US and the USSR. Therefore the military aspect dominated in the security thinking in the discipline and practice of international relations for a long time. Dominated by American scholars, security was seen to be about military threats, and these threats came primarily from the Soviet bloc.²

¹ B. Buzan & O.Wæver, *Liberalism and Security: The Contradictions of the Liberal Leviathan*. Copenhagen Peace Research Institute, Working Paper Series Columbia International Affairs Online, 1998 [online] <http://www.ciaonet.org/wps/bub02/bub02.html> accessed 29/01/2003.

² Research into the interplay between internal-external security discourses in American politics at the time shows that the Soviet challenge was more political, economic and social rather than military. The concerns were also with the protection of American 'values', as well as their international promotion as a way of establishing the new role of the USA in world politics. As Campbell demonstrates in his research of American security politics, the 'political hysteria' linked to the Soviet threat and the spread of communism into American life and values helped build a particular sense of American

Apart from the hegemonic, there was an additional political element of the state-military security which applied to all states, and this was its link to their territorial sovereignty. In short, security was understood as ‘a condition in which the sovereignty and territorial integrity of a country are guaranteed’.³ This interpretation of security was consolidated with the change in the international system after the end of the Second World War and the independence of the former colonies. Thus this new post-war world system continued to be based on the establishment of a world system of sovereign and legally equal states where the main threat was military and came from other states and their armies/security apparatuses. The system also aimed at minimizing the occurrence of military conflict between states. If states existed to project power over others through military actions, then since 1945 the use of power externally was more strictly regulated. Since 1945 war started to be seen as an undesirable last resort for conflicting interests and a new international system was put into place to control the use of military force, namely the mechanisms of the United Nations and the principle of non-intervention, monitored by the five members of the Security Council.

On one hand, the new international system provided legal equality between the states despite their economic and military inequality. Sovereign states had the legitimate right to use military power to defend the people occupying the territory of the state and from this perspective ‘hard’ security stems from *Clausewitz’s conception of war as ‘continuation of politics by other means’*.⁴ According to Bull, ‘Security in international politics means no more than safety: either objective safety, safety which actually exists, or subjective safety, that which is felt or experienced. What states seek to make secure or safe is not merely peace, but their independence and the

national unity in a post-national era. The American national security discourse linked national interest to collective security, and to the developing military sector. In other words, the need for internal legitimacy and state consolidation led to the rise of the *national* security discourse in America which was exported onto the international system. D. Campbell, *Writing Security. United States Foreign Policy and the Politics of Identity*, Manchester: Manchester University Press, 1992.

³ C. Rudolph, *Globalization and Security: Migration and Evolving Conceptions of Security in Statecraft and Scholarship*, 2002, p. 3 [online] <http://www.ciaonet.org/wps/ruc01/ruc01.pdf> accessed 01/01/2004.

⁴ C. von Clausewitz, *On War*, Princeton: Princeton University Press, 1984. In Carl Schmitt’s view it is precisely war that constitutes the political: ‘for only in real combat is revealed the most extreme consequence of the political grouping of friend and enemy. From this most extreme possibility human life derives its specifically political tension’. Schmitt in J. Huysmans, *The Politics of Insecurity*. London: Routledge, 2006, p. 134.

continued existence of the society of states itself which that independence requires; and for these objectives [...] they are ready to resort to war and the threat of war.’ Bull also points out that the phrase ‘peace and security’ in the United Nations Charter reflects this same view ‘that the requirements of security may conflict with those of peace, and that in this event the latter will not necessarily take priority.’⁵

On the other hand, even if peace was a contestable framework for the new international system, the new primacy given to sovereignty and non-intervention had a much more practical effect in ‘outlawing’ the ‘old’ states’ primary *raison d’être*, the right and ability *to go to war*. As a result theories of the state itself had to be adjusted to the new circumstances and since 1945 the state was increasingly justified as a provider of security *from* war to its population (external threats), and a provider of security through establishing law and order in a complex web of internal relationships (and internal threats). Milward points out that ‘all post 1945 historical study shows that what the citizen has demanded as “security” from the state has widened in range and complexity to the point where protection in the sense of physical safety has rarely been that definition of security which had the highest priority at critical moments of political choice... [A]lliance since 1945 has been given, sold and bought within a complex pattern of relationships between individuals, families and government.’⁶

The state territory and population to be defended was demarcated by state borders. Borders became a defining element of state-provided security as they defined sovereignty and jurisdiction, and were protected, in many countries, by militarised border police and extensive border controls up until the 1980s. This also established state control over the movement of people but also goods, money and information in and out of its territory, which created (and was justified by) some sense of internal security and the state’s power over its internal affairs. The internal security was further strengthened by the development of an extensive security apparatus, which operated internally, but in part was legitimised by ‘identifying’ a number of

⁵ H. Bull, *Anarchical Society. A Study of Order in World Politics* Macmillan Press, 1977, p. 18.

⁶ A. Milward, ‘The Springs of Integration’ in P. Gowan & P. Anderson eds., *The Question of Europe*, London: Verso, 1997, pp. 5-20, p. 13. Such relations have more recently been analysed through Foucault’s ideas of ‘biopower’, or the governmental management of ‘population’ beyond sovereignty and discipline. See M. Foucault, *Security, Territory, Population*. Basingstoke: Palgrave Macmillan, 2007.

external/internal threats (i.e. communists, spies, terrorists) and the need for intelligence to prevent these threats.

Deconstructing Security

Until the 1990s there was no attempt to undermine the central position of 'hard' security in the practice of international relations or the right of sovereign states to have armies and weapons.⁷ Criticism of the military and defence industries did exist but was limited to left-wing or liberal academics and pacifist movements in opposition and not decision-makers. The realist perspective in international politics maintained that peace was subordinate to the sovereignty or independence of individual states. The military form of security was 'constructed' by the powerful states in the post-war period but this construction was integrated into the new international order of equal sovereignty, which sought to accommodate and restrict the possibility of war in a system of a much bigger number of new sovereign players.⁸ In its construction hard security was also part of the political project of post-colonial sovereignty and establishment of autonomous states. From this perspective, realist theory and 'hard' security theory were normative rather than explanatory theories and hence, in the post-Cold War period, they became exposed to criticism for not reflecting the true nature of the world but the facilitation its construction in favour of those with power.⁹ Such criticisms of 'hard' security approaches began to surface in the 1980s and interpreted the *status-quo* in security as part of the problem. These criticisms grew out of the anti-nuclear, anti-war, then anti-arms race campaigns of the 1950s to 1980s. Some of these criticisms were incorporated by the superpowers into policies of *détente*, confidence building, arms control, etc. and are often seen as the precursor of the end of the Cold War. At the same time the relative success of the European integration project in Western Europe and its claimed success in preventing war in Europe gave additional credence to 'soft

⁷ Arguably, the US-led military offensive against Iraq in 2003 was the first war against a state with the official reason that the state had weapons.

⁸ Buzan and Wæver interpret the establishment of security as mainly a military issue as part of the desecuritising project of liberalism. If security is about war *only* then all other issues are part of *normal* politics. In this way the militarisation of security can be seen as a positive restriction of high politics. Buzan & Wæver, 1998, *op.cit.*

⁹ R. Ullman, 'Redefining Security', *International Security*, 1983, vol. 8, no. 1, pp. 129-153.

security' and economic integration as more effective approaches than military policies.

All these developments created a favourable ground for new theories of security, which started to challenge more firmly the military fixation in the field of security studies. This process was gradual and began in the 1980s within the military area itself and expanded by including non-military interpretations of security such as economic security, ecological security, and later, broadly defined societal security linked to cultural-identity issues.¹⁰ In academia, these developments were addressed by the security-society theories developed at the Copenhagen School of Security Studies in the 1990s, as well as a new wave of intellectual *deconstruction* of security which examined more or less radically the different elements of traditional security theory.¹¹ Most of the new theories came from the so-called 'Critical Security' field.

12

However, it was the end of the Cold War in 1989 which posed the greatest challenge to the military core of security studies and practice. The fall of the Soviet bloc seemed to dissolve the exclusivity of the military threat to international security in a number of ways. First, the unexpected collapse of the communist bloc exposed a

¹⁰ R. Smoke, *National Security and the Nuclear Dilemma. An Introduction to the American Experience*. New York: Random, 1987; D. Deese & J. Nye eds., *Energy and Security*, Cambridge, MA.: Ballinger, 1980; M. Renner, *National Security: The Economic and Environmental Dimensions*, Washington: Worldwatch 1989; B.R. Allenby, 'Environmental Security: Concept and Implementation', *International Political Science Review*, vol. 21, no. 1, 2000, pp. 5-22; M. Renner, *National Security: The Economic and Environmental Dimensions*, Washington: Worldwatch 1989; B.R. Allenby, 'Environmental Security: Concept and Implementation', *International Political Science Review* vol. 21, no. 1, 2000, pp. 5-22; O.Wæver, et. al. eds. *Identity, Migration and the New Security Agenda in Europe*, London: Pinter 1993.

¹¹ Classical texts include B. Buzan, *People, States and Fear*. Brighton: Wheatsheaf, 1983; R. Ullman, 'Redefining Security', 1983, *op.cit.*; O. Wæver *et.al.*, 1993, *op.cit.*; D. Campbell, 1992, *op.cit.*

¹² The debate between the security 'expansionists' and security traditionalists from the neo-realist camp in international relations took place in the early 1990s when the traditional security theories became the subject of more rigorous attacks which transcended the academia and became part of official policies. This debate is often linked in the literature to Stephen Walt's widely quoted 1991 article, *The Renaissance of Security Studies*, which asserts that the focus of security studies is the study of war and warns against revisionism in security studies which may undermine 'the intellectual coherence' of the discipline. S. Walt, 'The Renaissance of Security Studies', *International Studies Quarterly*, vol. 35, no. 2, June 1991, pp. 211-39. Shortly after the publication it was attacked by Kolodziej who published a critique of Walt's essay in the same journal. E. Kolodziej, 'Renaissance in Security Studies? Caveat Lector', *International Studies Quarterly*, vol. 36, no. 4, December 1992, pp. 421-38. Kolodziej extended the critique from a normative position and pointed out Walt's disregard of the possibility for solving conflict through non-coercive methods and use of multilateral institutions. This debate developed into a critique of realism from many perspectives, the most prominent of which became known as Critical Security Theory, a generic term for a wide range of approaches which sought to challenge the traditional perspective in the field. This contestation is usually referred to as the (neo)realism versus Critical Theory dispute in security studies. This term is usually used with capitals to distinguish it from criticism as a method.

major weakness in mainstream realist international relations and security theory which failed to predict the abrupt end of East-West confrontation. Secondly, the disintegration of the Soviet Union meant the demise of much of its military power and the disappearance of the threat it allegedly posed to the West. Thirdly, the defeat of communism without military challenge from the West demonstrated the economic and ideological power of the West, which now seemed more effective than its military capabilities; and for others, the inadequacy of the military focus in traditional security and international relations theory. Added to that, the opening of Russia to the West created opportunities for experts to visit that country and check the extent of its previous military might, and it proved to be much smaller than had been imagined – a discovery that put a question mark over the Western intelligence community. All of the above posed a direct threat to the Western (mainly American) military complex which now had to justify its existence. In the conditions of vastly decreased military threat from the Soviets, and especially, the end of the threat of mutually assured destruction, coupled with growing US superiority, which advanced the process of economic globalisation, the idea of a new reading of security began to take centre stage, and this was quickly endorsed in military circles as well.¹³

Re-constructing security

In the post-Cold war period, therefore, the critical security theories became increasingly popular particularly because they ‘exposed’ the inadequacies of realist international relations theories and its inability to explain social change. However, although the new approaches proposed a new way of conceptualising security they failed to produce a consensus on the nature of this ‘new thinking on security’. Some of these theories maintained the traditional referent object of security, i.e. states but others proposed a more radical re-assessment through *deepening* of the study of security, mainly by considering other levels of analysis than the state such as moving

¹³ This trend intensified after the terrorist attacks against the World Trade Centre and the Pentagon in the USA on 11 September 2001. Despite the fact that these attacks were organised and executed by a handful of individuals, they caused a profound change in the security thinking of the Western world and gave a sound backing for the expansion of the security policies of many countries, including non-Western countries which had some terrorism problems in the past or present. The new threats of terrorism and organised crime cannot be faced by traditional institutions such as NATO and required other policies and structures.

down to society and the individual or up to regional and global security.¹⁴ Some of these theories sought to deconstruct the process of ‘securitisation’ (such as the Copenhagen School of security studies).¹⁵ Others expose the contradictions of the security concept but others go further in that they try to find an alternative to the theories they find inadequate.¹⁶ Still others, however, suggested *broadening* or widening¹⁷ of security to include a wider range of threats – new or old but previously ignored threats or issues which pose a security threat but which were marginalized by superpower-military rivalry during the Cold War.¹⁸

On the basis of this debate about security, a branch of new ‘reconstructive’ theories emerged which used the weakened status of hard security to advance the new security thinking. This came mostly from the new focus on globalisation. Since the end of the 1980s there has been an increased, although sometimes contested perception, that the scale of international linkages is growing, which has created new transnational sites of power above the state. As a result of these new developments, state capacity is alleged to have been reduced not only in the area of the economy, now subjected to global economic forces, but in the execution of its sovereignty externally, due to the growing supremacy of international law and

¹⁴ B. Buzan, 1991, *op.cit.*; O. Wæver *et al.*, 1993, *op.cit.*

¹⁵ ‘Securitisation’ theory is based on the claim that security is a ‘speech act’, i.e. a political actor ‘labels’ an issue as a matter of security. In doing so the actor engaged in the labelling of security also claims the right to use extraordinary measures to address the security threat. In this process, the theory argues, issues are moved out of the sphere of normal politics and placed in the sphere of emergency politics which is usually out of democratic control. One of these issues is organised crime, for example. See B. Buzan, O. Wæver & J. de Wilde, *Security: A New Framework for Analysis*, Boulder, CO: Lynne Rienner, 1998.

¹⁶ Neufeld draws a comparison of ‘transformative’ critical security theories with the World Order Models Project (WOMP) of the 1960s and 1970s as a precursor of critical security studies in their attempt to change and emancipate/educate the world. According to Neufeld the problem with this approach is its utopian elements ‘in the sense that it can represent a coherent picture of an alternative order thus allowing for a normative choice in favour of a social and political order different from the prevailing order... [And] utopianism is constrained by its comprehension of historical processes’; accordingly, critical theory ‘limits the range of choice to alternative orders which are feasible transformations of the existing world’. These theories, he argues, are also ‘elitist’ as they rest on the assumption that ‘Specifically, with their view of people as essentially ignorant of the truths that would set them free’. M. Neufeld, ‘Pitfalls of Emancipation and Discourses of Security: Reflections on Canada’s ‘Security with a Human Face’, *International Relations*, 2004, vol. 18, no.1, pp. 109-123.

¹⁷ There are different terms describing the main thesis in the new theories of security. Jef Huysmans uses the term ‘thickening’ and Manners suggests: ‘vectoring’ (meaning dynamics) to describe the Copenhagen Schools’ typology of ‘securitisation’, and ‘being’ (meaning form and nature) to discuss subject/object and existential/ontological distinctions.’ I. Manners, *European [security] Union: from existential threat to ontological security*, Copenhagen Peace Research Institute, 2001, p. 9.

¹⁸ See K. Kraus & M. Williams, ‘Broadening the Agenda of Security Studies: Politics and Methods’, *Mershon International Studies Review*, Vol. 40, No. 2, 1996, pp. 229-254.

international/supranational organisations, and internally due to a decreased ability to protect increasingly porous borders.

The expansion of security is seen as objectively conditioned by the process of globalisation. Paul summarizes the globalisation-security nexus by pointing out the shift from hard to soft geopolitics:

Globalization enthusiasts have argued that 'hard geopolitics' has become obsolete, partly due to the lethality of new weapons and partly because states are now more interested in wealth acquisition through economic liberalization and trade. To them, war-making is no longer the state's primary focus, given the dramatic decline of inter-state wars since the end of the Cold War in 1991. In the larger international arena, great power competition is conducted through 'soft geopolitics,' with less emphasis on overt competition, arms build-up or crisis activity.¹⁹

From another perspective, globalisation is seen as a source of new threats arising from the new conditions it created and from weakening the traditional mechanisms of dealing with threats, i.e. weakening the power of the state. These newly identified threats come from non-state actors or intra-state developments: exploding population growth, ethnic conflicts, illegal or uncontrollable migration and influx of refugees, illegal drug and human trafficking, international crime, the spread of contagious disease across borders and even continents, international terrorism, environmental degradation and climate change, etc. Apart from the identification of non-state threats, there was an additional shift of attention to alternative referent objects of security other than the state. The state itself was dethroned from its central position in security and was given the role of an agent of security operating between the non-state threats, the threatened societies, and their individual members. The state has been treated as a source of threat in itself, especially in the developing world, where

¹⁹ T. V. Paul, 'States, Security Function And The New Global Forces' Paper presented at the REGIS sponsored Conference on 'What States Can do Now', McGill University, Montreal, November 3-4, 2000. Paul also quotes Mann's interpretation of the perceived weakening of sovereignty and hard politics: 'Post-nuclearism undermines state sovereignty and 'hard geopolitics,' since mass mobilization warfare underpinned much of modern state expansion yet it is now irrational.' M. Mann, 'Has Globalization Ended the Rise and Rise of the Nation-state?' in T.V. Paul & John A. Hall eds., *International Order and the Future of world Politics*, Cambridge: Cambridge University Press, 1999, p. 238.

it has been identified as the main threat to its population in cases of internal conflicts, dictatorships, or failure to provide law and order and other forms of protection.²⁰ According to Kolodziej, for example, the traditional security agenda rules out ‘those security threats posed by states to groups and individuals’, as well as threats posed by individuals to states:

The rationale, manipulative techniques, and coercive measures and institutionalized forms of repression of authoritarian regimes are proper and primary objects of study for security analyst and practitioners. Death squads in Central and Latin America, the totalitarian regimes of Nazi Germany, Stalinist Russia, and Pol Pot’s Cambodia, as well as the causes of the Holocaust, the Gulag, the killing fields are security issues of the first magnitude... Also worthy of study are the armed pursuits, strategies, and claims of non-state actors, like Kurds, Serbs, or Tamil Tigers. Guerrilla warfare, terrorism, and low intensity warfare, as the arm of the weak and disenfranchised, are no less central to security studies. These forms of armed conflict...are likely to be increasingly more important as ethnic and nationality wars, within nation-states, and so-called internationalised civil wars that spill over national boundaries, such as Lebanon, become more frequent.²¹

In the age of globalisation, it is argued that states have moved beyond a sovereignty-territory-military orientation.²² In these conditions, the traditional security agenda overlooks the issue of internal conflict as it is too focused on interstate wars, and ‘such conflicts are now far more frequent and deadly than interstate wars.’²³ The identification of new non-state security risks suggested that there is a need for a new society regime based on norms and interstate cooperation to replace the old, ‘anachronistic’ system of state sovereignty and inter-state competition.²⁴ In other

²⁰ These have developed into theories of ‘weak’ states, ‘failed states’, ‘state capture’. See J. Hellman, G. Jones, & D. Kaufmann, *Seize the State, Seize the Day. State Capture, Corruption and Influence in Transition*. World Bank Policy Research Working Paper No. 2444, 2000.

²¹ E. Kolodziej, 1992, *op.cit* , p. 422.

²² C. Rudolph, 2002 *op. cit.*

²³ E. Kolodziej, 1992, *op.cit.*, p. 432.

²⁴ This is not a new development in international relations theory. Robert. Keohane and Joseph Nye developed the concept of ‘complex interdependence’ in 1977 which challenged the classical realist theories and their emphasis on inter-state conflict and competition and suggested that the growing

words, there is a need (intellectual and political) to move beyond thinking of security in terms of the state and particularly the nation-state, 'as the society of states moves gradually toward a world society of peoples'.²⁵

In the Western public domain, and especially civil society dominated by liberal thinking, the shifting focus to non-military security became more popular for other reasons. First, in liberal circles it meant moving away from narrow national interests, which were rendered obsolete in the new post-Cold war conditions. Secondly, the expansion of the security concept and the new aspirations of liberalism led to the idea of 'democratising' security.²⁶ Non-military security theories offered what was seen as more 'emancipated' interpretations of security and world politics as it challenged the 'constructions' which sustain unequal power relations and prevent the international community from dealing with the 'real' security issues.²⁷ Emancipation, according to Booth and Wheeler, means 'the freeing of humans of those constraints which stop them carrying out what they would freely choose to do; such a goal implies the lifting of unacceptable legal, social, economic, moral political and physical constraints. People should be treated as ends not means, whereas states should be treated as means and not ends.'²⁸ Thirdly, the new security ideas supported the emerging agenda of 'governance' and its export to the international arena. In this view, states continue to matter in the post-Cold War conditions but they need to be transformed from a referent object of security to one of agents of 'people's security' governance along with other actors such as 'civil society' (especially in Eastern

economic interdependence between states necessitates inter-state cooperation through institutions and norms. However, the realist camp does not accept that interdependence excludes conflict. See R. Keohane & Joseph Nye *Power and Interdependence: World Politics in Transition*. Boston: Little Brown, 1977.

²⁵ E. Kolodziej, 1992, *op.cit.* p. 432.

²⁶ However, the (neo-)liberals ignored the theory of 'hard security' which Buzan and Weaver suggest is the 'desecuritising project' of liberalism, i.e. by limiting security to military and state affairs, everything else was *not* security therefore politics was more liberal. From this perspective, the act of classifying an issue as security threat is a negative (undemocratic) act and the expansion of security is not desirable. Buzan & Wæver, 2003, *op.cit.* Furthermore, security is not necessarily 'a good thing'. As the conditions of social life, and particularly political representation, are a subject of change, a constant and inflexible concept and policy of security may prevent a given society from adjusting to this change. Therefore, by itself security may cause insecurity for those whose interests in the new conditions have remained unrepresentative. From this perspective, expanding security behind the rhetoric of protection of humans or their emancipation may in fact increase the power of those who are in a privileged position by providing an even more sophisticated justification for the *status quo*.

²⁷ See also K. Booth, 'Security and Emancipation', *Review of International Studies*, 1991, vol. 17, pp. 313-326.

²⁸ K. Booth & N. Wheeler, 'Contending philosophies about security in Europe' in C. McInnes ed., *Security & Strategy in the New Europe*. London: Routledge, 1992, p.8.

Europe where civil society was seen as the agent of peaceful change), international organisations and the supranational or post-national European Union.²⁹

3.2. Soft Security and its limits

Soft or non-military security transcended the academic field in the mid-1990s when it began to appear in the speeches and policies of a number of international actors. It did not have a clear theoretical basis but it was quickly asserted as a new and more advanced concept for international relations and at first found supporters amongst mid-level powers in search of an international political identity.³⁰ The concept of soft security drew on many of the positive elements associated with Critical Security theories, expansionist theories, and theories of soft power as an alternative to hard power in international relations discussed in the previous section. However, the popularity of soft security in the last two decades is due not so much to philosophical evolution but to the new conditions in Europe during the 1990s discussed in the previous chapter.

The term ‘soft security’ is an ambiguous concept, which is not clearly defined in literature. It is usually used as an elastic term which can fill theoretical gaps. In a special issue of the journal *European Security* published in 2005 and dedicated to ‘soft security’, the concept was promoted as a generic term that be applied to the security concerns of the whole continent of Europe or even Eurasia. Soft security is seen as particularly useful concept in dealing with state failure and non-state actors. According to the contributors, the soft security threats must be addressed not only through policing and border management but by treating them at a global level.³¹ But in reality soft security is not so universal and all regions and countries seem to have a different set of soft security problems. Galeotti, for example, sees soft security as a

²⁹ *Ibid*, p. 13.

³⁰ Canada, for example, was particularly active in the asserting the human security concept which is conceptually associated with soft or non-military security. M. Neufeld, 2004, *op.cit.*, p. 114. The term ‘soft security’ is often associated with the Nordic states and particularly, the work of the Danish Commission on Security and Disarmament to demilitarise all aspects short of military combat operations. Shortly after the end of the Cold War, Denmark begun to conceptualize a shift to ‘soft security’ in its foreign policy.

³¹ G. Herd & A. Aldis, *Soft Security Threats & Europe*, London: Routledge, 2005. This is a special issue of the journal *European Security*, which includes other Soft Security articles cited in this chapter.

more useful agenda for 'the wide range of non-military problems facing post communist Europe'.³² For him the concept is reverse in the case of Eastern Europe: where 'hard' security assets have been transformed into 'soft security' threats, i.e. the use of military assets for internal conflict and secessionism, coups or repression, proliferation of weapons and force, destabilisation and transnational crime, and, fragmentation. Others use the concept to describe Russia's problems in the post-communist age such as nuclear safety, environmental problems, infectious disease, and illegal immigration.³³ In Africa, some institutions use the soft security concept in the effort to eradicate endemic civil wars and encouraging support for victims of African humanitarian disasters and the AIDS pandemic.³⁴ For Western Europe, 'soft security' threats arise from political or economic instability that may be caused by influx of refugees, problems with minorities and illegal immigrants, crime, and other problems of external origin. Some supporters of the soft security agenda see it as revolutionising the security field and the dissolving boundaries between 'soft' and 'hard' may help to build a coalition between 'hard' power America and 'soft' Europe over more pressing issues than the outdated problem of war.³⁵ The concept, others claim, is more useful for dealing with the problems in New Europe, and especially the Balkans, where hard security issues go hand in hand with soft security and both should be dealt with in a holistic way.³⁶

However, soft security has been criticised from security expansionists, as well as traditional 'hard' security supporters. On one hand, the concept of soft security has been dismissed because it suggests that some security threats are not as serious as 'hard' security threats which has led to less political involvement in resolving such

³² M. Galeotti, 'The Challenge of 'Soft Security': Crime, Corruption and Chaos' in A. Cottey, & D. Averre eds., *New Security Challenges in Postcommunist Europe: Securing Europe's East*. Manchester University Press, 2002, p. 151.

³³ C. Pursiainen, P. Haavisto & N. Lomagin, *Soft Security Problems in Northwest Russia and their Implications for the Outside World*, Finnish Institute of International Affairs (FIIA), Helsinki, 2001 [online] www.upi-fia.fi/eng/ accessed 22/08/2008.

³⁴ F. Vreÿ, 'Revisiting the soft security debate: From European progress to African challenges', Faculty of Military Science, Stellenbosch University, 2005 [online] [http://academic.sun.ac.za/mil/scientia_militaria/Internet%20Vol%2033\(2\)/03Vrey.pdf](http://academic.sun.ac.za/mil/scientia_militaria/Internet%20Vol%2033(2)/03Vrey.pdf) accessed 22/08/2008.

³⁵ J. Lindley-French, 'The Revolution in Security Affairs: Hard and Soft Security Dynamics in the 21st Century', *European Security*, March 2004, vol. 13, no. 1-2, p.1-15.

³⁶ M. Fotios, 'Soft Security Threats in the New Europe: The Case of the Balkan Region', *European Security*, March 2004, vol. 13, no. 1-2, pp. 139-156.

issues.³⁷ On the other hand, the value of the concept has been rejected because it seems to simply be replacing old with new threats, and old with new values which it promotes as 'emancipated' and superior. The ambiguity of replacing old threats with new ones is reflected in Galeotti's 'sliding scale' of asserted rather than clearly defined and analysed problems, which seem to be posing more threat *to* weaker and poor states rather than being universal. In the new global settings these states would be a danger to themselves but also to others:

Rather than a clear-cut case of peace or war, these non-traditional challenges need to be assessed on a sliding scale, perhaps going from problem through risk to outright threat. All modern states face some degree of organised criminality, for example, but whereas this might be considered merely a problem in, say France or Canada, the ability of the Mafia to defy the state might merit the title risk. While there is no fear that the mafia could topple the Italian state or disrupt the economic or social system, in some parts of post communist Europe, this may be a very real danger, elevating it to realms of full blown threat. This is of course, still a crude approach, not least because it relies on vague semantics, but it nevertheless illustrates the continuum on which these challenges must be placed.³⁸

Despite the claim for 'human' based universality, the soft security concept seems to include a very subjective range of issues, approached from a global, regional or local perspective. It can be stretched to include a number of issues seen as a potential threat to the people. Soft security has therefore been sharply criticised that for being a concept 'about almost everything except defence proper. In this sense, it is not really a term of practical value.'³⁹

The ambiguities surrounding the soft security concept are often identified as the concept's main weakness as it can be used for political manipulation. According to

³⁷ A. Cottey, *Security in the New Europe*, Basingstoke: Palgrave Macmillan, 2007. Critics have pointed at the Europeans for hiding behind 'soft security' and engaging only in issues they can afford, which is often no commitment at all. J. Lindley-French, 2004, *op.cit.*

³⁸ M. Galeotti, 2002, *op.cit.*, p.153-154.

³⁹ K. Becher, 'Soft security' with Russia after 11 September', *Russian Regional Perspectives Journal*, 2006, vol. 1, no.1.

Hyde-Price 'the new security agenda is increasingly composed of more intangible and diffuse risks and challenges. These often involve unfocused fears, perceptions of insecurity, and feelings of unease and cannot always be precisely specified.'⁴⁰ Even though soft-security issues often assume high political importance they are often linked to populist agendas and moral panics, particularly when it strives to resolve topical but poorly understood issues such as crime, terrorism, or migration.

Soft or new security appeals to those who seek to develop alternatives to military security.⁴¹ Some critics of soft security argue that the use of the concept reflects the need for a new basis for justifying the continuance and sometimes expansion of the state security apparatus and technology, thus re-legitimising coercive state power.⁴² The new security concepts adopted by states and international organisations such as NATO and the EU demonstrate a move to soft security.⁴³ Therefore soft security threats can also be interpreted as an argument used by security services and security advisors to justify their existence.⁴⁴ In some cases, the old Cold war experts simply re-qualify and become the new soft security protagonists, and the emergence of new policies to counter the new threats has led to the creation of new transnational bureaucracies, or a new supranational Securitocracy.⁴⁵ Langlais argues that identifying more security threats through promoting the soft security agenda, and the blurring of the old 'hard' and the new 'soft' security issues, as has led to 'a total security' which now operates on national and international level. It has justified the

⁴⁰ A. Hyde-Price, 'Beware the Jabberwock': Security Studies in Twenty-First Century' in H. Gärtner, A. Hyde-Price & E. Reiter eds., *Europe's new security challenges*. Boulder Col: Lynne Rienner Publishers, 2001.

⁴¹ Also, as some critics point out proponents of soft security are hardly bound to find a reserved position on security agendas as long as hard security instruments remain an alternative. S. Huntington, 'No exit. The errors of endism', *The National Interest*, Fall 1989.

⁴² See for example P. Andreas & R. Price, 'From War Fighting to Crime Fighting: Transforming the American National Security State' *International Studies Review*, 2001, vol. 3, no.3, pp. 31-52.

⁴³ NATO started to include more risks and treats in its Security Concept after the end of the Cold War. It became a much more active organisation compared to its previous 50 years of existence. In the 1990s NATO favoured and engaged in 'out-of area' military tasks which effectively turned the organisation from defensive to interventionist. The EU developed a similar interventionist strategy. It introduced its 'Petersberg tasks' of humanitarian and rescue tasks, peace-keeping tasks and tasks of combat forces in crisis management, including peace-making in the EU's Common Foreign and Security Policy, as well as the development of a security element and an external dimension of the Justice and Home Affairs.

⁴⁴ This is a criticism usually addressed towards the anti-crime policies and the American war on drugs, as well as the increasingly external roles given to FBI (as those would previously be dealt with by CIA).

⁴⁵ P. Gilroy, 'Multiculture in times of war: an inaugural lecture given at the London School of Economics.' *Critical Quarterly*, 2006, vol. 48, no.4, pp. 27-45.

creation of an all- pervasive intelligence gathering mechanism whose workings without a clearly defined set of threats, has in fact started to threaten the security of the individual while claiming to be ensuring individual's security.⁴⁶

Finally, there are objections raised to soft security as applied in the current context of international relations where states are still the main political structures through which individuals can exercise their sovereignty, at best in conditions of democracy. Neo-realists for example point out that it is too early to do away with the state as 'the security of 'citizens' [not just individuals] is identified with (and guaranteed by) that of the state; and, by definition, those who stand outside it represent potential or actual threats.'⁴⁷ Therefore the identification of non-state threats as common threats may not translate into a workable common definition of security, and especially if developed from top-to-bottom and from inside to outside, as in the case of the European Union in the New Europe. In this respect, as Dorff points out that 'problems' is not a concept ... [it] provides us with no ordering of reality that we can use to create a common understanding of what it is that we are talking about ... [nor a] range of possible policy approaches to address those problems'.⁴⁸

3.3. The problem of organised crime

Organised crime appears in almost every list of 'soft-security' problems – usually in a more rather than less prominent place as we have seen. But the argument that crime and organised crime pose new security threats presupposes that we have a clear understanding of what 'crime' and 'organised crime' is. However there is a long history of debate about just what these terms mean and their relationship to any underlying social reality. Crime is a contested concept in its own right and very much like security it is open to manipulation and use by those in power.

⁴⁶ R. Langlais, 'Total Security as Threat: The Blurring of Hard and Soft Security in Northern Europe', *Acta Borealia*, vol. 16, no. 2, 1999, pp. 63-79.

⁴⁷ *Ibid.*

⁴⁸ R. Dorff, 'A Commentary on Security Studies for the 1990s as a Model Core Curriculum' *International Studies*, 1994, vol. 19, pp. 23-31.

From crime to organised crime

Crime is a phenomenon defined by law which has made many sociologists, criminologists and others researching crime, feel rather uncomfortable because they study a phenomenon which is 'solely the creation of law' and therefore their science cannot 'control its own basic central role'.⁴⁹ This central role of the legal definition in the theoretical understanding of crime was first challenged in late nineteenth century and the beginning of the twentieth century by some theorists in the Social Positivist school in criminology, and most notably Emile Durkheim and his *anomie* theory.⁵⁰ Although the alternative view of crime that they suggested – crime as a pathological phenomenon in social relations, i.e. crime is caused *by* society – was of limited use in terms of understanding and clearly defining what constitutes crime, it was beneficial insofar as it rejected the legal definition for being unscientific and limited. This critical approach was advocated by others who suggested different alternatives of the nature of crime. In the late 1940s, Thorsten Sellin proposed the concept of *conduct norms* of social interaction as a basis for identifying criminal behaviour instead of using the means defined by law and thus, its political use.⁵¹ Edwin Sutherland added another very important argument in favour of the idea that law or structure are far too limited in defining crime by introducing the term of *white-collar crime* which he defined as 'a crime committed by a person of respectability and high social status in the course of his occupation'.⁵²

The white-collar crime concept suggested that powerful and well-off people commit *de facto* crimes and therefore crime is not limited to the lower social classes, and is not defined solely by disadvantageous social conditions of the perpetrators.⁵³ According to Henry and Milovanovic: 'crimes are nothing less than moments in the expression of power such that those who are subjected to them are denied their own contribution to the encounter and often to future encounters... Crime then is the power to deny others'.⁵⁴ Therefore, at its most basic level the issue of crime cannot

⁴⁹ W. Morrison, *Theoretical Criminology*, London: Cavendish Publishing Limited, 1997, pp. 7-11.

⁵⁰ E. Durkheim, *Suicide: A Study in Sociology*, New York: Free Press, 1979.

⁵¹ T. Sellin, *Culture Conflict and Crime*, New York: Social Science Research Council, 1938.

⁵² E. Sutherland, *White Collar Crime* New York: Holt Rinehart and Winston, 1949, p. 9.

⁵³ F. Pearce, *Crimes of the powerful: Marxism, crime and deviance* London: Pluto Press, 1976.

⁵⁴ Henry and Milovanovic (1996), cited in S. Henry & M. Lanier, *What is Crime? Controversies Over the Nature of Crime and What to Do about It*, Rowman & Littlefield Publishers, 2001, p.13.

be separated from the power of the state to regulate and police. But the international sphere operates in conditions of anarchy, i.e. there is no sovereign state to enact and enforce law. Dealing with crime beyond the states' borders, therefore, becomes the subject of negotiation between possibly competing sovereign authorities, in condition of power imbalance.⁵⁵ Such negotiation can be observed in the very process of defining organised crime.

The problem of defining organised crime has existed since the concept first emerged in the United States at the beginning of the twentieth century.⁵⁶ Despite the increased focus of both academics and practitioners on organised crime in the last two decades there is no consensus on what organised crime actually is. Organised crime implies a contrast between the crimes of the individual and crimes involving some form of association. However, it is not clear how much crime is actually undertaken by isolated and completely atomised individuals and when an association becomes an organised relationship. Klaus von Lampe summarises this confusion: 'organised crime would comprise all criminal acts that are not impulsive or spontaneous [and] would refer to all criminals that do not operate in a complete social isolation.'⁵⁷ In most cases the use of the term 'organised crime' relies on an implicit notion of some sort of criminal conspiracy much of which comes from popular culture and media representations of the ways in which underground criminal groups can operate.

The problems of definition arise partly because of the covert nature of any organised type of criminal activities which makes the phenomenon difficult to observe and the level of organisation can sometimes be imagined rather than based on hard facts.

⁵⁵ One example of international controversies over the definition of crime is the case of smuggling opium into China by British and American traders in early 19th century. It was a direct violation of China's law but was considered and called 'essential trade' by British and American authorities. Another example with clear power relation is the US policy aimed at curbing the illegal import of cocaine from Latin America, which impinged on local cultures where coca leaves fulfil traditional social, cultural, religious and medicinal roles. F. MacGregor ed., *Coca and Cocaine: An Andean Perspective*. Westport, CT: Greenwood Press, 1993; E. Nadelmann, 'Global Prohibition Regimes: The Evolution of Norms in International Society', *International Organization*, 1990, vol. 44, no. 4, pp. 479-526.

⁵⁶ The concept of organised crime emerged in the United States in the 1920s mainly to signify a particular type of crimes, also referred to as racketeering, 'dealing in stolen property, insurance frauds, fraudulent bankruptcies, securities frauds, credit frauds, forgery, counterfeiting, illegal gambling, trafficking in drugs of liquor, or various forms of extortion.' M. Woodiwiss, *Organised Crime – The Dumbing of Discourse*, The British Criminology Conference: Selected Proceedings, 2000, vol. 3.

⁵⁷ K. von Lampe, 'The Concept of Organized Crime in Historical Perspective' Paper presented at the international conference 'Crime organise international: Mythe, pouvoir, profit...', Universite de Lausanne, Switzerland, 1999.

Ultimately, organised criminal syndicates are only such by name, and in the cases of established criminal business enterprises such as the Medellin or Cali Drugs Cartels, the Ku Klux Klan, or the Provisional IRA there is no limited formalisation of rules and relationships through paperwork typical for any legal organisations documented. Worse, as criminal liability lies with the individual, it has been difficult to investigate criminal organisations as such rather than the individuals who are alleged to constitute them.⁵⁸

Organised crime and alien conspiracy theories: from the US to Europe

A large part of research on the topic studies organised crime as a social phenomenon whose real nature is difficult to pinpoint because it becomes entangled in a discourse of the outsider, the other, the migrant, the underclass. From one end of the political spectrum, such research is linked to the ‘alien conspiracy concept’, that is the ethnic and foreign membership of the organised criminal groups. It is connected with the organisational approach mainly because the latter was formed under the influence of the organisational model of the (Sicilian) Mafia, which was considered by some to be responsible for committing organised crimes in the USA during the 1960-70s. It reflects the ambiguous status of the migrant. At one level migrants are seen as a threat because they are part of a disorganised flood; at another they are a threat because of the networks they generate as they use their traditional norms and values such as kinship for illicit purposes. The alien concept has had a considerable impact on the perception of organised crime in Western Europe like many of the American ideas of the phenomena.⁵⁹ An example is the note in the 2000 International Crime Assessment, prepared by various US agencies: ‘Indigenous criminal organisations

⁵⁸ In the height of the anti-organised crime politics in the USA in 1970, a new federal law was adopted in order to circumvent the problem of individual criminal liability. The Racketeer Influenced and Corrupt Organizations Act (RICO) provided for extended criminal penalties and a civil cause of action for acts performed as part of an ongoing criminal organization. Chapter 96 of Title 18 of the United States Code, 18 U.S.C. § 1961–1968.

⁵⁹ For a review of the journey of organised crime policies from America to Britain see M. Woodiwiss ‘Transnational Organised Crime: The Global Reach of an American Concept’, in A. Edwards & P. Gill eds., *Transnational Organised Crime: Perspectives on Global Security*, Routledge, London, 2003, p. 13-27, and M. Woodiwiss & D. Hobbs, ‘Organized Evil and the Atlantic Alliance. Moral Panics And The Rhetoric of Organized Crime Policing in America and Britain’, *British Journal of Criminology*, 2009, vol. 49, pp. 106–128.

are less entrenched elsewhere in Western Europe but foreign-based crime groups have established footholds in expatriate communities in most EU countries'.⁶⁰

The American experience has been criticised for being irrelevant to the particular organised crime situation in Europe: 'most criminal groups are not hierarchically organised and are not constituted out of one single ethnic group... instead the image of specific and opportunistic criminal networks seems more accurate'.⁶¹ Empirical evidence shows that organised crime in Europe, and in fact in America too, is neither ethnically constricted, nor heterogeneous.⁶² The ethnic characteristic used by some authors in defining organised crime shows some of the problems in conceptualising organised crime and the issue of subjectivity. At the same time, it may just be a matter of fact, for example, that certain areas of crime or certain geographical areas are dominated by actors of specific ethnic backgrounds but this does not translate into a characteristic of organised crime *per se*.⁶³

From the more critical corner, Berki, contemplating the phenomenon of criminal organisation, concluded that 'such a thing cannot exist... [It is] either purely instrumental or pre-existing tangential association'. When the criminal organisation exists for an instrumental reason, it is 'aggregated rather than united'. It is set up for the perpetration of crime solely – it has the individual ends and it is usually dismantled after those ends are achieved. For Berki 'the criminal are and remain strangers in *crime*, and the criminal world is not a proper world but atoms in the void'. Berki describes associations based on ethnic, class or minority basis, as 'the twilight-zones between crime and politics' whose outlaw activity could be seen also as resistance to the state, which 'takes the form of law-breaking but in substance is order-defiance'.⁶⁴ He also points out that it is this type of 'organisations' that often

⁶⁰ International Crime Threat Assessment [online]
<http://clinton4.nara.gov/WH/EOP/NSC/html/documents/pub45270/pub45270index.html> accessed 25/03/2005.

⁶¹ *Towards a European Strategy to Prevent Organised Crime*, Joint report from Commission services and EUROPOL, Commission of the European Communities, Brussels, March 2001.

⁶² D. R. Liddick, 'An Empirical, Theoretical, and Historical Overview of Organised Crime', *Criminology Studies*, 1999, vol. 6.

⁶³ K. von Lampe, 'Critical Review of Conceptual Approaches. Report for Project Assessing Organised Crime' Sixth Framework Programme, 2004, p.12.
[online] <http://www.sprinxdata.com/AOC/publications/AOC-DLV04-vR1.pdf> accessed 14/04/2004.

⁶⁴ R. N. Berki, *Security and society: reflections on law, order and politics* London: Dent, 1986, pp.136-139.

become the end target of policies of fighting crime. In an even more radical study of Western crime control policies Christi refers to the fight against crime as a 'form of control of dangerous classes'.⁶⁵ From this perspective 'organised crime' is not a definition of an activity with legal or social implications but who and why should be controlled and eliminated, through the criminal justice institutions.⁶⁶

The emphasis on policing organised crime in recent Western policies on crime has replaced a milder, more social view of crime as a side effect of social inequalities. Organised crime is seen as evidence of a conspiracy and sustainable business of crime, which is not a side effect but a contributor to injustices in society. Such views of crime evolved and migrated from more suppressive crime regimes such as the US war on crime/drugs to Europe and morphed into an indigenous organised crime theory which developed a further set of controversies and ambiguities. Theories of organised crime have drawn on the empirical discoveries of local crime in Europe, and other places, and have now formed part of a truly global conceptualisation of organised crime with its own criticism and valuable insights.⁶⁷

3.5. Conceptualising organised crime

The approaches to organised crime are interlinked in most theories but for the purpose of the discussion here they are divided in four distinct groups: organised crime as a structure of association and organised crime as structured activities; social definitions of organised crime and understandings of crime based on economic

⁶⁵ N. Christi, *Crime Control As An Industry. Gulags Western Style?* London: Routledge, 1993, p. 62.

⁶⁶ The development of those institutions in the US and the UK is the subject of Garland critique of the culture of control and surveillance which has developed in both countries in last decades. D. Garland, *The culture of control: crime and social order in contemporary society*, Chicago: University of Chicago Press, 2002.

⁶⁷ Concepts of crime travelled together with policies to counter crime. As Levi points out in relation to money laundering: 'In 1986, when the legal regulation of money-laundering began in the West, British banking representatives had to go on a newly devised course in the US to find out what money-laundering was (or, to be more precise, what the Americans believed it to be): two decades later, there are (at least) monthly conferences in different parts of the globe updating bankers, regulators, legally required corporate Money-Laundering Reporting Officers and, increasingly, independent lawyers and accountants on changes in regulation and 'money laundering typologies', supplementing interactive videos and CD-ROMS whose viewing is considered to be essential to comply with national legal regulations on staff training.' M. Levi, 'Controlling the international money trail: What Lessons Have Been Learned?', paper presented at Global Enforcement Regimes Transnational Organized Crime, International Terrorism and Money Laundering Transnational Institute (TNI), Amsterdam, 28-29 April 2005, p. 3.

theories.⁶⁸ This grouping of organised crime theories and approaches brings out the key characteristics of our contemporary views of organised crime. These views have been influenced by other areas of scholarship such as organisational theory, cultural and sociological theories and pure economics of supply and demand, and have had an impact on the development of anti-crime policies.

Organised crime as 'association'

In mainstream criminology, the most popular approach to organised crime has been the 'organisational' one though critics argue that linking crime and organisation brings together two ambiguous concepts. Definitions which use the idea of crimes committed by an organised body (organisation) can be found in various documents regardless of origin, institution or country. It is also the basis of the understanding of organised crime in some of the fundamental works dealing with the subject, such as those of Cressey and Albin. The latter argues that the 'most primary distinguishing component of organized crime is found within the term itself, namely organization'.⁶⁹ According to Cressey, 'one who would define organized crime precisely... must be concerned with *formal and informal* structure; it is the necessity for this concern that puts organised crime in the scholarly domain of systems analysts and other organisational specialists'.⁷⁰ The organisational approach has been adopted in some US legislation, too. For example, the Omnibus Crime Control and Safe Streets Act said 'organised crime means the unlawful activities of the members of a highly organised, disciplined association engaged in supplying illegal goods and services'.⁷¹ The other concepts, connected with this type of approach, and deriving from it, are the ones of definable structures of the organised criminal groups.⁷² These are usually perceived as hierarchical, comprising at least two ranks. Cressey's work

⁶⁸ Cressey (1967) cited by M. Woodiwiss, 2000, *op.cit.*

⁶⁹ J. Albin, *The American Mafia: Genesis of a Legend*, New York: Appleton-Century-Crofts, 1971.

⁷⁰ D. Cressey, *Theft of the Nation: The Structure and Operations of Organized Crime in America*, New York: Harper, 1969, pp. 310-1 (my italics). Cressey's work on organised crime was commissioned by the US government which may explain the focus on organisation. The organisational conspiracy came from evidence testified by Joseph Valachi who claimed there was an Italian criminal organisation in operation in America, which he called La Cosa Nostra (Our Thing or This Thing of Ours). His evidence has later been disputed.

⁷¹ Control and Safe Streets Act, US Public Law 90-359, Title I, Part F (b) Omnibus Crime Control and Safe Streets Act, 1968.

⁷² As Levi notes, there are separate structures of association and structures of activity. M. Levi, 'Perspectives on organised crime', *Howard Journal of Criminal Justice*, November 1998, vol. 37, no. 4, pp.335-345.

is based on the concept that organised crime is not just connected with an organisation of criminals but with a monolithic organisation – ‘organised criminals are members of the monolith; organised crime is what they do’.⁷³ The idea of the hierarchy was influenced by the models of the Sicilian Mafia but also influenced by prevailing rational-bureaucratic ideas borrowed from the legitimate business world.

However, the organisation-based approach, together with its derivative concepts of hierarchy, ranks, code of conduct, division of labour and professional specialisation of the criminals, ethnic origin, is becoming less popular in both the academic and official discourse on organised crime.⁷⁴ Organised crime, and particularly crime linked to international markets, is increasingly conceived of as rather flexible, inter-ethnic, and non-centralised.⁷⁵ These views have developed on the basis of empirical criminological research which from the 1980s began to build an alternative picture of organised crime in which these types of criminal activities were seen to be carried through flexible criminal networks (sometimes described as a cell structure) rather than monolithic and concentrated establishments.⁷⁶ This research did not always part completely with the organisational approach but found that organisation exists mainly on a lower, local level where criminal groups are based on families, friends or business connections. In the age of globalisation, these structures have become looser rather than rigidly organised on both lower and national-international level. Hobbs for example, argues that:

At the dialectic between the local and the global substantiates, the indirect nature of the power wielded by large multinationals confirms elements of flexibility, autonomy and independence that were absent during previous eras dominated by increasingly arcane institutions such as the mob, the

⁷³ D. Cressey, 1969, *op.cit.*

⁷⁴ Such theories are still used in some cases of policy-oriented research. Such views of crime are prevalent in Eastern Europe as well and have been employed to explain emerging illicit markets. The publications of the Centre for the Study of Democracy based in Sofia, has used similar models to construct theories of the structures of crime in Bulgaria and the Balkan region. See www.csd.bg.

⁷⁵ P. Lupsha, ‘Individual Choice, Material Culture, and Organized Crime’, *Criminology: An Interdisciplinary Journal*, 1981, vol. 19, no.3, pp. 3-24; A. Block, *East Side-West Side – Organizing Crime in New York, 1930-1950*, Cardiff: University of Cardiff Press, 1983.

⁷⁶ R. Ruggiero, ‘Transnational Crime: official and alternative fears’ *International Journal of Sociology of Law*, 2000, vol. 28; P. Williams, *Organising Transnational Crime: Networks, Markets and Hierarchies* Washington: Ridgeway Centre, University of Pittsburg, 1998; G. Bruinsma & W. Bernasco, ‘Criminal groups and transnational illegal markets A more detailed examination on the basis of Social Network Theory’, *Crime, Law & Social Change*, 2004, vol. 41, pp. 79-94.

firm or the gang. Trading relationships between coalitions of criminals of different national origins involves a coagulation of local interests. It is at the local level that organized crime manifests itself as a tangible process of activity.⁷⁷

Establishing a pattern of organisation of criminal activities, hierarchical or networked, on a national or transnational level is questionable, as research shows that crime takes different forms and seems to adjust itself to changing conditions. This ability to invent and re-invent itself is a characteristic of organised crime, which anti-crime policies have persistently overlooked. It could be argued that the type of crime that these policies are aimed at is in fact a ‘disorganised crime’ – a point made by Reuter who stresses that organised crime is determined by economic forces which dictated small scale enterprise to avoid law enforcement impediments and therefore crime is *disorganised* with little incentive or capacity to create corporate-like structures.⁷⁸ As Woodiwiss and Hobbs comment on Reuter’s conclusions: ‘Mafia gangsters participated in illegal markets but they did not control them.’⁷⁹

The official views on organised crime have largely borrowed from these theoretical developments, as the EU Organised Crime Situation Report shows: ‘there is a move away from criminal specialisation to criminal diversification. The traditional hierarchical structures are being replaced by loose networks of criminals, linked to a quick and dirty profit-making network’.⁸⁰ As a result, organised crime in the European perspective is now seen differently from the American concept of a monolithic structure, (which still is popular in the United States and other countries, and is particularly persistent in institutions). According to some European

⁷⁷ D. Hobbs, ‘Going Down the Glocal. The Local Context of Organised Crime’ *Howard Journal of Criminal Justice*, November 1998, vol. 37, no. 4, pp.407-422. According to Hobbs these local groups function ‘within the constraints of the structural dynamics of a local class milieu that is realigned in negotiation with global markets’ and the way local crime operates and organizes itself is determined by the ‘ecological community’, of both pre-industrial (territorial) and industrial (market) worlds. *Ibid.*

⁷⁸ P. Reuter, *Disorganized Crime – The Economics of the Visible Hand*, Cambridge, Mass: MIT Press, 1983.

⁷⁹ M. Woodiwiss & D. Hobbs, 2009, *op.cit.*, p.114.

⁸⁰ Commission of the European Communities, ‘Towards a European strategy to prevent organised crime’, Joint report from Commission services and Europol, 13.03.2001, Brussels. This comment assumes that there was once a traditional hierarchical structure.

researchers, European organised crime is 'less well-organised, very diversified'.⁸¹ It is not disconnected from the rest of society and in fact exists alongside the legal business and 'recruits both skilled and unskilled labour, like any other industry'.⁸²

The emphasis on organisation, whether defined formally or informally, is especially problematic when applied in international policies. The organisational forms and networks vary between countries and over time reflecting different patterns of development, or indeed culture. It is not clear therefore that it makes sense to use the same concepts to analyse widely different social forms and to criminalise them. Thus the tribal/clan systems, of a more traditional society involve different communal networks to those of peasant based societies and these in turn differ from the networks of industrial and post-industrial societies. The focus on organisation therefore creates major analytical problems. The more structured the view of organised crime the more capable the term is of being empirically tested, the evidence measured and the significance of organised crime even being denied. The less structured the view of organised crime, the less capable it is of being tested and measured and its existence and seriousness subject to test. Networks can be mapped but not clearly limited with the result that organised crime can be made to seem as if it is everywhere.⁸³

Organised crime as methods and activities

A second popular approach towards defining organised crime concentrates on the methods and the activities, used by the organised criminals for achieving their goals (profit, power or protection). The activities/methods approach is often adopted by the official, and especially legal interpretations of the issue, because it provides quite a flexible and expandable, and more 'observable' concept of organised crime. This

⁸¹ P. van Duyne, *Organized Crime in Europe*, New York: Commack, 1996; C. Fijnaut *et. al.*, *Organized Crime in the Netherlands*, The Hague: Kluwer Law International, 1998.

⁸² V. Ruggiero, *Organized Crime in Europe: offers that can't be refused*, Aldershot: Dartmouth Publishing Company, 1996.

⁸³ According to Sartori (1984) in such 'conceptual travelling' the connotation and extension of a concept could be inversely related, and concepts can become more abstract, general and more widely applicable as they are divorced from their local characteristics. When applied to local empirical research however, the concepts become narrower and less abstract. In either case, the concept seems to control the number and nature of cases where it can be applied. Sartori in G. Friedman & H. Starr, *Agency, structure, and international politics: from ontology to empirical inquiry*, Routledge, 1997, p.36.

approach stresses the nature of the crimes committed and not the level of organisation, which was more difficult to establish. In the USA the Task Force on Organised Crime of the 1967 President's Commission spoke of organised crime as those 'supplying illegal good and services – gambling, loan-sharking, narcotics, and other forms of vice'.⁸⁴ Block and Chambliss, too, define organised crime as 'those illegal activities, connected with the management and co-ordination of racketeering (organised extortion) and vices – particularly illegal drugs, illegal gambling, usury, and prostitution'.⁸⁵ Contemporary views of which crimes are organised crimes agree on some of the traditional activities but include many others depending on level of social harm or danger, or just personal viewpoint.

The list of organised crime activities is unlimited. One academic site describes them as 'drugs trafficking, money laundering, fraud against the EU budget, arms dealing, international car theft, loan sharking, trafficking in art and heritage objects such as antiques and rare fossils, environmental crime such as black market trading in nuclear materials and the illegal disposal of hazardous waste, trafficking in endangered animals and plant species, prostitution and pornography (including internet porn), smuggling of illegal immigrants and trading in human organs, computer crime (including the communication, between groups, of planned illegal activities through highly complex coded messages), and coercive labour etcetera..⁸⁶ Defining organised crime by such listings of accepted manifestations, assumes that organised crime acts are self-evident. This approach taken independently from views of structure runs the risk of making the concept meaningless and/or analytically unusable. Therefore it is usually accompanied by the view that for these criminal activities to take place, some form of coordination of people is needed, which brings the discussion back to the issue of structure.

Most definitions that focus on the activities of organised crime (although not all of them) also point out the methods used by organised criminals, such as violence, corruption, extortion, sometimes in an attempt to delineate organised from other

⁸⁴ Cited in G. Fiorentini & S. Peltzman, 'Introduction' in G. Fiorentini & S. Peltzman eds., *The Economics of Organised Crime*, Cambridge: Cambridge University Press, 1995, pp.1-30, p.3.

⁸⁵ A. Block & W. Chambliss, *Organizing Crime* New York: Elsevier, 1981.

⁸⁶ University of Exeter, Politics Department (no date) Organised Criminal Activities [online] http://www.ex.ac.uk/politics/pol_data/undergrad/Neilson/activities.html; accessed 11 December 2006.

types of crime.⁸⁷ The California Commission on Organised Crime used the issue of violence as central for defining organised crime itself – as a ‘technique of violence, intimidation and corruption’.⁸⁸ The use of corruption is central for a certain number of understandings of organised crime. Cressey argues that ‘the position of corrupter is as essential to an illicit business as a position of negotiator is to a labour union’.⁸⁹ For Kenney and Finckenauer what was ‘essential to the definition of organised crime is the use of violence and the threat of violence’, as well as ‘corruption of public officials’, because ‘these factors define organised crime’.⁹⁰ However, this is a consequence of the impossibility of regulating the illicit market, rather than organised crime *per se*.⁹¹

The methods/activities approach is indeed a flexible one as it stresses what organised crime is in terms of its manifestations, which can be expanded or limited for the purpose of research or investigation. It is however attacked as a defining feature of organised crime exactly because of that. Lupsha, for example, argues that the organised criminal activity is ‘instrumental rather than an end in itself’.⁹² Ianni also criticises the focus on the nature of the crimes, especially in relation to the ethnic origin of the targeted perpetrators.⁹³ Furthermore, organised crime can involve both legitimate and illegal activities, and equally, ‘legitimate businesses’ can also use illegal methods which adds more confusion as to the of organised crime concept.⁹⁴

⁸⁷ For example, H. Abadinsky, *Organized Crime*, Nelson Hall, 1985; J. Albanese, *Organized Crime in America*, 2nd ed., Cincinnati, 1989; Cressey, 1969, *op.cit.*; S. Adamoli *et al.*, *Organised Crime Around the World*, Helsinki: HEUNI, 1998.

⁸⁸ The Special Crime Study Commission on Organized Crime, Final Report, Sacramento, California, 1953. One can see how the views of organised crime in respect of legal/illegal activity have changed significantly later on, especially during the 1960s.

⁸⁹ Cressey, 1969, *op.cit.*, p.315

⁹⁰ D. Kenney & J. Finckenauer, *Organised Crime in America* Belmont, CA: Wadsworth Publishing Co, 1995.

⁹¹ Illicit markets cannot be regulated by the state’s legal institutions, hence there is no means of enforcing contracts, settling business disputes, etc. except by threat of violence. This is one of the arguments which support the view that organised crime represents a threat to state sovereignty, as the state cannot claim its monopoly on the use of force.

⁹² Cited in R.Kelly *et al.*, *Handbook of Organized Crime in the United States*, Westport: Greenwood Press, 1994.

⁹³ F. Ianni, *Black Mafia, Ethnic Succession in Organized Crime*, New York: Simon and Schuster, 1974.

⁹⁴ One example is the practice of corrupting of foreign officials through bribes of different size and kind, which was widely practiced and officially accepted until 1990s. Bribing abroad was not criminalised, and in some countries such bribes were even tax-deductible. The post Cold War quest against international corruption can also be seen as an effort to minimise cost and competition for entering developing world’s markets. The fact that these countries have started to accept those new

Therefore the dividing line between who is outside the law and who is not can be blurred if one uses the activities approach. This is a fundamental assertion of the *white-collar* or *corporate crime* theories and their arguments would not exclude the crimes of the powerful from organised crime. Labelling theory, or defining crime by its 'name', is also useful in critiquing this method as the focus on particular acts when defining organised crime may (intentionally or not) exclude other types of crimes.⁹⁵ Such problems in defining organised crime which in effect conceal wider social issues such as the origin of perpetrators have led to expanding the theory of organised crime in order to accommodate the crucial social element along with, or at the expense of its directly observable characteristics such as organisation or methods.

Organised crime as a social condition

The concept of the socially determined character of organised crime or organised crime as part of the social system is the third approach in the conceptual discourse of organised crime, which has its own range of interpretations. Von Lampe summarises this approach where organised crime is seen 'in essence as a social condition in which legitimate and criminal structures are integral parts of one corrupt socio-political system, regardless of either the types of crime promoted or the degree of organisation of those supporting the system'.⁹⁶ Block, for example, argues that 'organised crime is part of a social system in which reciprocal services are performed by criminals, their clients and politicians' and therefore 'a definition demands three distinct entities functioning for the same illicit purpose'.⁹⁷ Ianni similarly defines 'organised crime as an integral part of American social system that brings together a public that demands certain goods and services that are defined as illegal, an organisation of individuals who produce or supply those goods, and corrupt public officials who protect such individuals for their own profit or gain'.⁹⁸ Michael Woodiwiss extend the criticism to the influence of the American school of thought, for separating this phenomena from the rest of the society (the 'otherness concept' or

anti-corruption norms also reflects their increasing 'weakness' *vis-a-vis* global companies and Western governments.

⁹⁵ Examples could include legal forms of extortion such as bank fees, or companies' tax evasion, compared to illegal forms such as banknote forgery, or organised robbery. Activities of similar type and consequences seem to selectively get the label of 'crime' or 'no crime'.

⁹⁶ K. von Lampe, 1999, *op.cit.*

⁹⁷ A. Block, 1983, *op.cit.*, p. 57.

⁹⁸ F. Ianni, 1974, *op.cit.*, p.15-15.

even alien conspiracy concept) instead of addressing the conditions which let it emerge and develop, namely the legal system.⁹⁹ For Levi the ‘true social definition of ‘organised criminals’ [is] a set of people whom the police and other agencies of the State, regard or wish us to regard as “really dangerous” to its essential integrity.’¹⁰⁰

From the perspective of identity and cultural theories organised crime can be interpreted as a display of cultural or identity aspirations (such as personal identity, e.g. masculinity, ethnic or national identity). It can be seen as a form of protection of the group/gang or individuals who claim to belong to a gang in order to survive in harsh social conditions (for example, teenager gangs, football hooligans, etc.).¹⁰¹ Other empirical research on ethnic minorities and people from foreign ethnic origin has revealed, ‘situations where people manipulate ethnic reputations to protect, justify, or promote themselves’, including a false claim that they belong to an ethnic mafia.¹⁰² The socio-system and cultural-anthropological approach are useful especially because they help explain the limited success of fighting crime, but those approaches have difficulties explaining the internationalisation of crime. This is where the economic approach throws light on the durability of organised crime as it views the phenomenon as a driven by forces of demand and supply rather than being led by conspiracy, structure, or activities. To the extent that organised crime is seen as international, this is mainly linked to the high demand of illegal goods and services in the West, and the provision of some of these from the less developed countries.

Organised crime as an economic phenomenon

Economic analyses of organised crime view the phenomena as a result of pure economic choice. The economic analyses of organised crime have become very popular in recent years in both academic circles and among policy makers. The

⁹⁹ M. Woodiwiss, 2000, *op. cit.*

¹⁰⁰ M. Levi, 1998, *op.cit.*, p. 335.

¹⁰¹ See for example S. Cohen, *Folk Devils and Moral Panics. The Creation of Mods and Rockers*. Blackwell, 1972, S. Cohen, *Images of Deviance*. Penguin Books, 1971. F. Bovenkerk, D. Siegel & D. Zaitch, ‘Organised crime and ethnic reputation manipulation’, *Crime, Law & Social Change*, 2003, vol. 39, pp. 23-38.

¹⁰² F. Bovenkerk et al., 2003, *op.cit.* p. 24.

earliest academic studies of organised crime as an economic activity can be traced back to the late 1960s, in the USA, when the first assumptions were made about crime as business.¹⁰³ The business approach to crime is appealing as it can explain both the activities of ‘organised crime’ as motivated simply by profit, and the nature of criminals as rational economic maximisers. Organised crime is perceived as an economic enterprise, involving all elements of the business activities such as existing structure, management, risk and profit evaluation, marketing, etc. Schelling argued that the defining feature of organised crime is the drive for exclusive management of the illegal markets, or monopoly. Quoting Mark Furtensberg he points out ‘it is well known that organised crime exists and thrives because it provides services the public demands. Organised crime depends not on victims, but on customers’.¹⁰⁴ The economic approaches rarely make moral assessment of organised criminal behaviour for it perceives the organised criminal as people who rationally and normally calculate the risks and gains if committing crimes and thus maximise their ‘preferences...like the rest of us’.¹⁰⁵

Some economists share the view that the existence of organised crime has a positive side. According to Buchanan, this is linked to the basic economic law of demand and supply and free competition. The imposition of monopoly in order to avoid the effect of competition on prices results in high prices in the provision of legal goods. But if we turn the argument on its head, he further argues, it would be socially desirable to support organised crime because: [i]f monopoly in the supply of ‘goods’ is socially undesirable, monopoly in the ‘bads’ should be socially desirable, precisely because of the output restriction’.¹⁰⁶ Similar views are shared by other economists’ research on organised crime as profit-making activity. Thomas Schelling’s work for example, focuses on the monopolising tendencies of organised crime, and the aim of the criminal organisation is to acquire a rule-making role in a business or geographical

¹⁰³ See G. Becker, ‘Crime and Punishment: An economic Approach’ *Journal of Political Economy*, 1968, vol. 76, no. 2, pp. 169-217; I. Ehrlich, ‘Participation in illegitimate activities: a theoretical and empirical investigation’, *Journal of Political Economy*, 1973, vol. 81, pp. 521-565.

¹⁰⁴ T. Schelling, ‘Economic Analysis and Organized Crime’, in US President’s Commission on Law Enforcement and the Administration of Justice, *Task Force Report: Organized Crime* (US Government Printing Office, Washington (DC), 1967, pp. 114-115.

¹⁰⁵ R. Sullivan, ‘The Economics of Crime: An Introduction to Literature’, *Crime & Delinquency*, 1973, vol. 19, no. 2, pp. 138-149.

¹⁰⁶ J. Buchanan, ‘A Defense of Organized Crime?’ in S. Rottenberg ed., *The Economics of Crime and Punishment*, Washington, D.C.: The American Enterprise Institute, 1995, pp. 119-32, p. 119.

area, and the use of violence is dictated by the need for private protection as illegality of their activity prevents criminals from official protection from police and courts.¹⁰⁷ Schelling depicts the role of organised crime as ‘much closer to that of government establishing its own rules in the areas over which it extends its power’.¹⁰⁸

The economic approach has been valued for many reasons but mainly because it encompasses all the other approaches and gives logical answers to questions raised by them, such as what the objectives of the organised criminal activity are, what the organisational features exist for, why certain individuals choose this type of behaviour. It also targets the inadequacies of the social and structural explanations for the existence of organised crime since the ‘organised crime’s objective does not differ from that of commercial organisations’.¹⁰⁹ But use of economics in organised crime theory is limited and mainly linked to the American tradition. In Fiorentini and Peltzman’s view, this is because European economists are more wary of using rational choice models, which explain legal economic activity. If individuals’ behaviour in illegal activities is not ‘rational’ in the economic sense, it is more appropriately analysed through sociological theories of pathologies and deviance.¹¹⁰ Moreover, the economic approach sits uneasily in the official views of organised crime. Although some of the official discussion admits the economic basis of the criminal behaviour it becomes problematic if organised crime is viewed as a rational choice inside the system. In official terms the problem has to be posed as a conflict of two conflicting rationales in which ‘criminal enterprises *penetrate* otherwise lawful business thus undermining and corrupting it’.¹¹¹

This discussion of the approaches to defining and understanding organised crime shows the very varied views on the nature and the extent of the phenomenon, all of which are open to criticism. What this means for the policy on organised crime is

¹⁰⁷ Schelling in G. Fiorentini & S. Peltzman, 1995, *op. cit.*

¹⁰⁸ Cited in G. Fiorentini & S. Peltzman, 1995, *op. cit.* p. 4. The view of organised crime as similar to governments and states is used in many theories, see C. Tilly, ‘War making and state making as organised crime’ in P.B. Evans, D. Rueschmeyer & T. Skocpol, eds. *Bringing The State Back In*, Cambridge: Cambridge University Press, 1985 and C. Tilly, *Coercion, capital, and European State Formation, AD 990-1990*. Malden, Mass.: Blackwell, 1990; P.Green and T. Ward, *State Crime. Governments, Violence and Corruption*, London: Pluto Press.

¹⁰⁹ A. Schloenhardt, ‘Organised crime and the Business of Migrant Trafficking, An Economic Analysis’, Australian Institute of Criminology Working Paper, Canberra, 1999.

¹¹⁰ G. Fiorentini & S. Peltzman, 1995, *op. cit.*

¹¹¹ P.Gill, *The Sage Dictionary of Criminology*, London: Sage Publications, 2001.

that the simple transposition of these views into policy is problematic and often counterproductive, particularly if the policies target particular manifestations of organised crime.¹¹² In the area of international relations such problems become more apparent due to the malfunctions of the simple export of policies from one legal sovereignty to another where the policy does not respond well to local conditions.

3.5. Transnational organised crime and security

The literature on new or soft security identifies organised crime, international or transnational, as a security threat but rarely explains the link between crime and security, and such a link is sometimes assumed as self-evident.¹¹³ On one hand, the difficulty of conceiving of crime as a cause or effect of complex socio-economic relations is also reflected in the attempt to rationalise international crime as a source of instability – a claim that is usually asserted but seldom analysed. On the other hand, there is a problem when theorising the international elements of crime vis-à-vis international security as the latter is still a concept linked to relations between states. The threat crime poses to international security is therefore regarded as indirect: organised crime threatens the sovereign power of the state, weakens the state and this translates into ‘hard’ security issues such as civil wars.¹¹⁴ Alternatively, crime can be an international problem by virtue of its existence in different states, i.e. states may share expertise and pull resources to fight the problem of crime with the need to identify links between their crime problems. Finally, crime

¹¹² A holistic approach to organised crime is impossible due to problems of definition. If police go after drugs they end up at drug deals and drug addicts, if they go after money, then they may end up in the legal business. If they target the international element, they clash with others’ jurisdictions. At best such clashes may produce some negotiated policies. An example of such negotiation can be seen in anti-sex trafficking policies. The countries of origin of illegal immigration have been reluctant to impose restrictions on travel unless a moral element enhances the political value of the policies but this also limits their application to a small and relatively powerless minority. Such negotiations can be identified in many other policies, which countries have been made to adopt to get in line with the international regime. In some cases they have resisted the adoption of policies as in the case of the problematic development of an international anti-drug regime or Interpol throughout the 20th century demonstrate.

¹¹³ There are different terms used by different authors and institutions (international, multinational, global) but transnational organised crime has become most common in recent years especially after it was adopted by the United Nations. The term ‘transnational’ has a different connotation to ‘international’. Whereas crime may have international and cross-border elements, transnational crime implies coordination and/or structure across national borders. From a legal perspective, ‘international crime’ in fact refers to violations of international law as set up by United Nations conventions, i.e. pertaining to state sovereignty and intervention.

¹¹⁴ See for example M. Kaldor, *New and Old Wars: Organised Violence in a Global Era*, Cambridge: Polity Press, 1999.

may transcend borders and pose risks to other states, which gets the theory back to the point where crime threatens the state internally. Such perspectives of crime as a threat of an international dimension but without a clear theoretical link to international relations is taken by a number of authors who develop an analysis of organised crime as a threat to state, national, and international security.¹¹⁵

The concept of *transnational* organised crime however, seems to sit more comfortably in international relations theory and practice as it provides an alternative to the problematic concepts of international and national organised crimes. According to Jamieson 'transnational crime is crime that violates the laws of more than one state. It is different from international crime – crime that is recognized as such under international law – and from domestic crime. Transnational crime tends to have its centers of operation where risks are low, and provides goods and services where profits are high. It exploits boundaries and jurisdictions as strategic advantages, unlike law enforcement, which is inhibited by them.'¹¹⁶ From this point of view, efforts to counter this 'mobile' crime are needed from all states in the world system as it poses a threat to all. Security of states and people are threatened not from other states, or indeed crime from other states, but by a 'stateless' transnational organised crime.

Since the end of the Cold War transnational organised crime has been one of the central concepts replacing war on the security agenda and has even been called, on occasion, the 'New Evil Empire' which poses more danger to international security than anything the West had to face during the Cold War, i.e. the Soviet military and communism.¹¹⁷ At times the political and academic rhetoric has seemed unconstrained. Senator John Kerry stated: '[T]his is new. This is something that none of us has ever experienced before. It is not ideological. It has nothing to do with left or right, but it is money orientated, greed based criminal enterprise that has

¹¹⁵ For example, P. Williams & D. Vlassis eds., *Combating Transnational Crime. Concepts, Activities and Response*. Franc Cass Publishers, 2001; P. Williams, 'Transnational Criminal Organisations and International Security' *Survival*, vol. 36, no. 1, pp. 96-113; P. Lupsha, 'Transnational Organised Crime versus the Nation-State' *Transnational Organised Crime*, 1996, vol. 2, no.1, pp. 21-48.

¹¹⁶ A. Jamieson, 'Transnational Organized Crime: A European Perspective' *Studies in Conflict & Terrorism*, 2001, vol. 24, pp. 377-387.

¹¹⁷ L. Raine & F. Cilluffo eds., *Global Organised Crime: The New Evil Empire*. Washington, DC: Centre for Strategic and International Studies, 1994.

decided to take on the lawful institutions and civilised society.’¹¹⁸ According to Shelley, ‘transnational organized crime will be one of the major problems facing policy makers in the 21st century. It will be a defining issue of the 21st century as the Cold War was for the 20th century and colonialism was for the 19th. No area of international affairs will remain untouched as political and economic systems and the social fabric of many countries will deteriorate under the increasing financial power of international organized crime groups.’¹¹⁹ Transnational organised crime is also one of the ten threats identified by the High Level Threat Panel of the United Nations; it is part of the discussion on G8/7 meetings, the Council of Europe, OSCE, EU, NATO and a number of regional organisations.

Transnational organised crime is seen as a threat to developed countries, which often represent the market or the receiving side of criminal goods and services, facilitated by increased travel and intensified international trade in the age of globalisation. Furthermore, the West is seen to be ‘threatened’ by the penetration of foreign mafias, and individual criminals via illegal immigration. During the 1990s there was a growing fear linked to the spread of ‘new’ Eastern Mafias in the West, especially the Russian organised crime, but also traditional ethnic organised crime such as the Italian Mafia, Chinese Triads, the Japanese Yakuza, the Columbian cartels, and Nigerian criminal organisations. The international illegal activities were mainly trafficking of illegal drugs (mainly heroin from Asia, cocaine from Latin America and marihuana from Northern Africa), arms trafficking (particularly to rogue states in the Third World), trafficking of nuclear material, trafficking of people (particularly women for sexual exploitation), and sometimes cyber and financial crimes across borders. According to Galeotti,

If organised crime is in many ways a corollary of modernisation, so globalisation begets transnational crime. This poses its own problems in policing, controlling borders and protecting national economies. However, it is also important to conceive this as a soft security issue.

¹¹⁸ Cited in R. Godson & W. Olson, ‘International organised crime’, *Society*, January-February 1995, pp. 18-29, p. 19.

¹¹⁹ L. Shelley, ‘Congressional Testimony Before The House Committee On International Relations Threat From International Organized Crime And Terrorism’, 1997 [online] http://www.fas.org/irp/congress/1997_hr/h971001ls.htm accessed: 17/10/2001.

Transnational crime can emerge in the form of linkages between local gangs, dealing across borders to maximise their profits while minimising their losses, just as many licit companies do. However – again, as in the legal, ‘upperworld’ economy – it can also involve penetration by foreign enterprises, whose power and effectiveness allows them to take over or destroy local rivals. This carries with it a series of potential dangers, from the destabilising influence of ‘invading’ criminal groups to the possible colonisation of a nation’s underworld by gangs based abroad.¹²⁰

However, in the light of our previous analysis it is important to consider this issue more calmly. The idea of transnational crime as a distinctive phenomenon and its interpretation as a security threat, as well the policies on international and European level which this view has informed, are open to more criticism.¹²¹ First, the difficulties of defining organised crime are ‘reproduced’ in theorising transnational organised crime. As the previous section discussed the further up and away from territory one attempts to define organised crime (i.e. from the local to national to international level) the more problems one finds in establishing existing organisation. Labelling certain activity as ‘transnational organised crime’ could be simply a matter of fashion, which according to Hobbs expresses ‘both the concept's global nature and the redundancy of any perception of organised crime that does not embrace the centrality of transnationality...yet this trend persists without the hindrance of empirical evidence’.¹²² Hobbs and others even question the use of the abstract term ‘transnational’ in defining organised crime:

‘Transnational’ is especially problematic in referring to OC, as it is a term that normally relates to cross border activity involving the explicit exclusion of the state... The relationship between the State and serious crime is now established as so varied and indeed ambiguous that the term ‘transnational organised crime’ has only some meaning if situated within

¹²⁰ M. Galeotti, 2002, *op.cit.*, p. 153.

¹²¹ The securitisation of organised crime has been criticised by civil society and the media. There are numerous critical commentaries of the watchdog *Statewatch* which criticise the obsession with security, and the misplacement of some political issues in the agenda of national or international security. A commentator from the UPI press agency noted: ‘For Europe, the whole thing is about buying security. Even immigration is not a political issue; it is a security issue’, quoted in T.Bunyan ‘EU reaches for global role?’ *Statewatch*, vol. 6 no 1, 1996.

¹²² D. Hobbs, 1998, *op.cit.* p. 407.

the political science inspired moral panic that have emerged as a response to the fragmentation of the Eastern bloc and found a home within the budget wars of declining western states.¹²³

For Ruggiero much of the debate on transnational crime in the West is fed by 'conspiracy theories' and the reinvention of the alien threat and challenges most assumptions made about the threat posed by transnational organised crime by comparing it to legal economic activities. He concludes, 'organised crime may learn criminal techniques from fraudulent white collars rather than teaching them such techniques'.¹²⁴ This type of crime is not conducted by powerful, centralised, coordinated organisations but dispersed and diverse social actors. Therefore, he argues, transnational organised crime is not more dangerous to population or state than other criminal activity.

From the area of study of policing within criminology, Sheptycki launches an even stronger attack on the transnational crime agenda which he labels 'transnational folk devils', a largely exaggerated threat of an internationally manifested crime which does not explain the rise of international policing and security structures 'when most crime is local in character...[and] most police work is grounded in relatively small geographical locales'.¹²⁵ What transnational anti-crime policies seem to be concerned with is not international crime (which is 'not the looming monster feared by some') *per se* but 'market crimes', i.e. supply of illegal services and products. Translated onto the international economic arena, this means that anti-crime policies could target some more than others as 'the only market niche open to some entrepreneurs in some regions is unseemly, to say the least: immigrant labour, white

¹²³ *Ibid.*

¹²⁴ V. Ruggiero, 'Transnational crime: Official and Alternative Fears' *International Journal of the Sociology of Law*, 2000, vol. 28, pp. 187-199.

¹²⁵ J. Sheptycki, 'Transnational policing and the makings of the postmodern state' *British Journal of Criminology*, 1995, Vol. 3, No.5, pp. 613-635, p. 617. In some cases local policing has in fact been negatively affected by the global anti-crime war which has shifted more policing power to national and international levels. It has also affected the distribution of policing resources. For an interesting review of such side effects see Stelfox's study on policing organised crime in England and Wales. Stelfox concludes that anti organised crime strategies on a national level have negatively affected resources on the local level and for such strategies to work they 'have to be tailored to the characteristics of individual crime types, the networks within which they are committed and the needs of the community in which offenders operate'. P. Stelfox, 'Policing Lower Levels of Organised Crime in England and Wales', *Howard Journal of Criminal Justice*, November 1998, Vol. 37, No. 4, pp. 393-406, p.401.

slavery, weapons, plutonium, toxic waste, drugs, stolen cars.’¹²⁶ The way organised crime ‘functions as a marker in the redefinition of internal and external security concepts’ has helped re-produce the Iron Curtain ‘between the poorer ‘source’ countries...and the richer ‘destination’ countries’¹²⁷

This theme is further explored by Edwards and Gill who point out that the post-Cold War policy shift to transnational organised crime was based on a ‘narrated’, populist threat from either the ‘criminologies of the other’ (i.e. crime coming from outside from ‘ethnic’ outsiders) or the ‘criminologies of the self’ (crime caused by the internal dynamics of market societies).¹²⁸ The term ‘transnational organised crime’ therefore is not a distinctive phenomenon but an amalgam of different views and opinions of what could otherwise be termed ‘ordinary crime’ linked by a loose and very *ad hoc* based network which at some point crosses borders.¹²⁹ The extent to which these networks are a threat to security is a subjective interpretation. Their containment however is very difficult because of the symbiotic nature of legal-illegal markets, and therefore policy is pushed to areas and methods, which do not clash with other concerns. This has encouraged externalisation of transnational organised crime policy and theory, which draws attention to ‘supply’ side, i.e. immigrant communities or weaker non-Western states.

For the non-Western world the threat of transnational organised crime is defined along different lines. It is usually linked to the theory of weak or failed states and therefore remains state-centred and internal, i.e. crime can threaten states’ and therefore international stability. According to Dupont, the argument that transnational organised crime as a threat to international security rests on four propositions:

¹²⁶ J. Sheptycki, ‘Policing, postmodernism and transnationalization’ *British Journal of Criminology*, 1998, vol.3, no.3, pp.485-503, p. 494.

¹²⁷ M. Den Boer, ‘The European Union and Organized Crime: Fighting a New Enemy with Many Tentacles’ in E. Viano, ed., *Global Organized Crime and International Security*, Aldershot: Ashgate Publishing Ltd, 1999.

¹²⁸ This has translated into a significant policy changes such as developing an external dimension to crime policy, and an internal shift from previous sovereign (commanding) to now regulatory (steering) government. A. Edwards & P. Gill, ‘The politics of ‘transnational organized crime’: discourse, reflexivity and the narration of ‘threat’, *British Journal of Politics and International Relations*, 2002, vol. 4, no. 2, pp. 245-270, p. 251.

¹²⁹ K. Gachevska, ‘Goodfellas against Godfathers: the fictional character of European Policing and European Crime’ in *European Studies Conference Proceedings*. Rousse Bulgaria: University of Rousse Press, 2008.

- 1) Transnational organised crime can be a direct threat to the *political sovereignty* of the state because it can be powerful enough to undermine the legitimacy of governments as it may 'challenge the monopoly over taxation and violence traditionally enjoyed by the state and work at cross purposes to the aim of good government, which is to protect the rights, property, welfare, and security of its citizens'.¹³⁰
- 2) It can pose a threat to state economy and *economic security*, especially in 'developing states or so-called economies in transition...because individuals and elites become habituated to working outside the regulatory environment and the rule of law, weakening state capacity'. This is also linked to the problem of corruption.
- 3) Transnational criminal enterprises can become so powerful as to pose a threat to *global security* because it can 'subvert the norms and institutions that underpin global order and the society of states'.
- 4) Transnational organised crime can have a *military and strategic dimension*: 'revolutionary political movements and insurgent groups sometimes turn to crime to finance their operations'.¹³¹ In the process, their original political goals and motivations become subordinated to their illicit money making activities'.¹³²

This cause-effect link, which is made between crime and state instability, resembles a similar belief of crime being caused by moral deficiencies in individuals. Internal policy informed by this belief has aimed at 're-assertion of moral authority and 'zero

¹³⁰ Similar view is shared by Mary Kaldor who claims that crime undermines states which then leads to more crime. M. Kaldor, 'Cosmopolitanism and organised violence' Paper presented at Conference on 'Conceiving Cosmopolitanism', 2000, April 27-29, 2000, Warwick.

¹³¹ According to Kaldor, crime is endemic to contemporary conflicts 'characterized by a rise in crime, so that often it is difficult to distinguish between criminal and political violence.' M. Kaldor, 1999, *op.cit.*, p. vii; see also R. T. Naylor, 'The insurgent economy: black market operations of guerrilla organizations', *Crime Law and Social Change*, 1993, vol. 20, pp.13-51, and A. Jamieson, 2001, *op.cit.*

¹³² A. Dupont, 'Transnational Crime, Drugs, and Security in East Asia' *Asian Survey* 1999, vol. 39, no.3, pp. 433-455. In Dupont's opinion all these dangers associated with TOC, and particularly the military dimension, blurs 'the distinction between military and law enforcement issues and changing the way security is conceived.' In a similar line, Andreas and Price identify this as 'domestication of international space' by the USA. Andreas and Price, 2001, *op.cit.*

tolerance' for those who transgress this authority'. Western policies towards such states range from aggression (i.e. US drugs war in Latin America) to aid conditionality (US and EU policies in 1990s), accession conditionality (EU towards Central and Eastern European candidates), institutional reform (EU in the Balkan protectorates).¹³³

The experience from previous internalisation of anti-crime policies has not always been positive for the recipient or targeted countries. Burger's study on the international anti-drug policy and international relations is indicative. First, the interpretation of illicit activities as a threat to the state can and has reinforced undemocratic regimes. Suppressed minorities are also deprived of a potential source of income, which may prevent their elimination or assimilation, and in this way anti-drug policies have reinforced social inequality. Secondly, as far as economic security is concerned, the profits from the drug trade could serve as a relief from the state's external debt and thus promote more autonomy and financial independence: 'Illicit drug profit can be considered a new form of economic assistance from the First to the Third World. The transfer of wealth is neither controlled by the First world in terms of its use, nor has to be paid back with interest'.¹³⁴ Thirdly, traffickers working for private profit 'need the stability of government in order to operate smoothly' and they have no interest in challenging the *status quo* and the state. When the traffickers are 'public and political' then their goal is legitimacy and participation in decision circles' and they will not necessarily challenge the state. Fourthly, the extent to which an international anti-crime regime can be built is dubious as states may adopt certain behaviours proscribed by Western-led normative regimes because they need to legitimise themselves as 'modern' and the adoption of these norms is largely rhetorical.¹³⁵ Additionally, as Burger points out 'regimes regulate governments, not

¹³³ In fact, the biggest militarisation of the war on drugs in Latin America came after the end of the Cold War, with the invasion of Panama, Plan Colombia, and increased use of US military advisors and aid for internal fight against drug traffickers.

¹³⁴ Some Latin American countries are heavily dependent on drug money such as Bolivia or Peru, where the cocaine agribusiness is the largest agricultural business.

¹³⁵ The internationalisation of the anti-drug regime by US foreign policy since the 1960s has been very problematic and European and Latin American state did not always comply for internal or foreign policy reasons. This regime has also aimed at non-western drug production and has thus caused protests from developing states about double standards. It has often excluded measures on production and export of drugs (such as amphetamines) and drug precursors produced in the West. E. A. Nadelmann, 'Global Prohibition Regimes: The Evolution of Norms in International Society' *International Organization*, 1990, vol. 44, no. 4, pp. 479-526.

individuals' and the effect of the international anti-crime regime may be limited especially compared to 'hard security' regulation.¹³⁶ Therefore such failures may in fact increase inter-state antagonisms. On the other hand, if the policies disseminated by an international anti-crime regime are state-based and repressive, they may cause more damage than crime itself.

3.7. Conclusion

The rise of non-traditional, or non-military and non-state based threats such as organised crime has been accompanied by new theoretical developments in the area of security studies and international relations. The main idea of the new readings of security is that the old and anachronistic state-based theories are inadequate to explain change and are therefore subjective and restrictive theoretically and politically. The new security theories suggest a more emancipated reading of security, which takes into account many other factors apart from (or even dismissing) states' self-interest which used to define the views and 'reality' of international relations. Instead of viewing traditional security as a way of limiting the negative effect of the international system, these theories suggest that this type of security fails to deliver what it intends to, i.e. the security of the world or the individuals in it. In this way security is seen as a depoliticised concept linked to governance instead of sovereignty.

A more emancipated view of security suggests looking at the 'real' threats to people's security, including the issue of crime. Crime is identified as a universal threat, which challenges both the core referent object of security, the individual, but also the stability of the state, and the stability of the international system. The problem of crime is seen as new or increased due to the globalisation processes, and the demise of the war as the central obsession of international relations, has finally opened the possibility to deal with this danger.

¹³⁶ A. Burger, 'Conundrum: Illicit Narcotics and theoretical Approaches in International Politics' Paper presented at International Studies Association 40th Annual Convention, Washington D.C., February 16-20 1999, Columbia International Affairs Online [online] www.ciaonet.org; accessed 29/01/2003.

The merger of both views of organised crime as a localised threat and global security through destabilisation of states has developed into the idea of transnational organised crime as a threat to global security which requires the effort of all states and actors against these 'sovereign-free' criminal actors in the international arena. However, the organised crime threat is only 'new' in that it cannot be perceived through the traditional prism of international security as conflict between state entities. The long tradition of criminological literature devoted to the study of organised crime reveals a number of problems in perceiving this social phenomenon as a threat, particularly one that exists independently of a complex of social relations.

This puts analysis of the role of organised crime in the development of the EU accession processes in a difficult situation. During the Cold War the focus on hard security and conventional threats to peace involved a comparatively clear perception of what the threat was and how it could be measured and dealt with as well as what its underlying causes were. There were, of course, huge debates over detail as each side sought to measure each others weaponry and its destructive power. Nonetheless in principle an armed state threat was a threat, a soldier was a soldier, a tank a tank and an ABM an ABM. Indeed in the calculation of mutually assured destruction the presumption was that threat and force could be neatly calibrated. With the shift to soft security concerns this relative certainty disappeared. The nature of the threat of organised crime, its definition, scale and causes are all much more ambiguous. Incorporating the 'organised crime threat' into the area of international relations and regional organisation therefore might have been expected to create new levels of confusion. But, as in the domestic sphere, it can be argued that this discussion operated at a tangent to the social reality of organised crime, which is also reflected in the policies developed to counter the problem. By adopting the non-military, soft security approach in international relations, the European Union was promoted as having an added value of post-modern, post-national level of policy dissemination but it has instead risked reproducing the nation-state's policies of control on a supranational level. This, as the next chapters will show, may not have made the Union closer to the people but has perhaps helped to widen the gap between the people and the new structures of governance developing *within* the state.

Chapter 4. Organised Crime in Europe and the Emergence of the EU's Internal Security Governance

4.1. Introduction

The previous chapter discussed how during the 1990s organised crime became an issue of international politics through the expansion and modification of the international security concept. Organised crime appeared on the agendas of many international organisations and forums, in the foreign, as well as domestic, policies of all Western and some non-Western states. For most of these actors, organised crime was a new area of activity although the issue of organised crime had long been present in the public discourse of some states, such the US, Italy, and in Latin America. For most of the world, however, organised crime was not something with which states and societies identified. Nonetheless, the history of international relations throughout the twentieth century was very much a history of establishing international rules and regulations, many of which effectively created new crimes or spread norms in the area of crime on a global scale.¹ This chapter discusses the EU anti-crime policies in the context of previous attempts to address crime internationally. The chapter's aim is to analyse the continuity and change in these international anti-crime policies and identify the novelties, which the EU has introduced, to counter the security risk posed by 'organised crime' since the end of the Cold War.

The structure of the chapter is built around three main issues: the rise of the organised crime discourse in Europe in the 1990s, the subsequent rush to measure and define organised crime as a common European problem, and the process by which the EU became involved in the emerging international regime of organised crime fighting and developed its internal security policy through the Justice and Home Affairs (JHA) pillar and extended it beyond its borders. The argument of this chapter builds around the increased attention to crime in Western Europe in the

¹ For example, the illegal drug trade, football hooliganism, terrorism, war crimes. Responses include the establishment of Interpol in 1923, UN anti-drug efforts, international or bi- and multi-lateral agreements on extradition, asylum, prohibition of torture, European initiatives against terrorist upsurges in the 1920s and the 1970s, to mention a few.

aftermath of the Cold War, the way the problem was perceived, defined and internationalised via the European Union and myriad European policy makers, civil society actors, governments and international organisations. The EU policy on crime built on these complex networks and but also on previously existing structures created by efforts to promote international cooperation in criminal matters. The chapter traces the peculiar evolution of these efforts, which remained separate from the Union's supranational level of governance before and after 1989 due to restrictions of state sovereignty, but morphed into forms of EU-level law enforcement institutions such as Europol and Eurojust. The 1990s intensive policy of criminal justice cooperation within the EU motivated by perceived rise of organised crime did not manage to overcome problems of multiple jurisdictions, different interests and clash of institutional competences, and issues of national sovereignty and democratic accountability, all of which made the efforts to promote law enforcement beyond national borders very difficult. The chapter concludes with a discussion of how the external dimension of the anti-crime agenda grew in importance within a complex system of internal security governance.

4.2. The Rise of an Organised Crime Discourse in Europe

Before the 1990s the problem of crime was on the agenda of organisations like the UN, or the Council of Europe but it was conceived mainly as a common *social* problem which member states faced and not an international security issue. Whereas terrorism and the international drug-trade became subjects of conventions and further regulation, they were not conceived as part of an international conspiracy in the way that drug trafficking and Al Qaeda are seen today. Pre-1990s international activity on crime involved mainly 'reactive responses to crises' in Western European states and did not lead to the formulation of any pro-active international policy.² Furthermore, before the 1990s there was no specific focus or even commonly agreed concept of organised crime in international agreements.³ There had been some discussions of

² F. Heidensohn, 'Introduction. Convergence, diversity and change' in F. Heidensohn & M. Farrel eds., *Organised Crime in Europe*, London: Routledge, 1993, pp. 3-13, p. 6.

³ American foreign policy has been active in promoting its anti-drug agenda internationally and that has included using international forums such as the UN, but organised crime as the structure that carries out that trade has not featured in UN agreements. There were a few documents accepted by the UN such as the Single Convention on Narcotic Drugs (1961) and Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) but both have no mention of organised crime.

organised crime within the Council of Europe and the European Parliament before the 1990s but their reports dealt neither with the extent or nature of organised crime in Europe, nor with the legal arrangements concerning this type of crime.⁴ In the Eastern bloc organised crime was not considered a problem by the authorities before 1989 either.⁵ Organised crime, or the Mafia, was associated with Italy and the Italian Diaspora in the USA and most countries did not define their underworld as organised crime.

However, since the mid-1990s, Europe has come to be regarded as ‘a single area of operation of transnational criminal activity’⁶ and ‘a prime target for organised crime’.⁷ This increased attention to organised crime had started in the 1980s due to American cultural and political influence as well as some international investigations of the US Drug Enforcement Administration (DEA).⁸ Academic research on this kind of crime, on the other hand, was very limited and dated from the 1970s, with the exception of some studies on the Italian Mafia and British serious criminals conducted in the 1980s.⁹ The first attempts to conceptualise an international anti-

However, the UN successfully criminalized non-authorized production and trade in narcotics since the 1960s but this in effect resulted in increase of the trade and modification of drugs. The organisation was also active in the pre-1990s international regime against terrorism and political violence but most of its documents concerning organised crime (including corruption, trafficking, etc.) were adopted in the 1990s and 2000s.

⁴ C. Fijnaut, ‘Police Cooperation within Western Europe’ in F. Heidenson & M. Farrel eds., *Organised Crime in Europe* London: Routledge, 1993, pp. 103-120.

⁵ E. Bienkowska, ‘Crime in eastern Europe’ in F. Heidenson & M. Farrel eds., *Organised Crime in Europe*, London: Routledge, 1993, pp. 43-54.

⁶ K. von Lampe, ‘Recent German Publications on Organised Crime’ (no date) [online] <http://www.organized-crime.de/corevess.htm>, accessed 31/08/2008. Von Lampe gives a brief review of the German publications on organised crime, mainly from the 1990s. According to von Lampe: ‘Since the 1960s, the German debate on organized crime has gone through roughly three stages. Originally, organized crime was viewed as more or less an endemic problem in the U.S. and Italy, but one largely confined to those nations. From the mid 1970s to late 1980s, police officials pressed for a uniquely German understanding of organized crime, independent of the Mafia paradigm. Since 1990, the debate appears to have come full circle in that attention is once again focused upon foreign crime syndicates and ‘Mafias.’ *Ibid.*

⁷ A Secure Europe in a Better World. European Security Strategy. Brussels, 12 December 2003 [online] <http://ue.eu.int/uedocs/cmsUpload/78367.pdf> accessed 20/12/2008.

⁸ The fascination with a ‘global mafia’ was partly triggered by Claire Sterling’s book on the international links of the Italian and other Mafias, which had used evidence collected by DEA. Sterling went on to achieve international popularity with her work on the similarly ‘global’ terrorist networks. C. Sterling, *The Mafia*. HarperCollins Publishers: London, 1990. Sterling made popular the notion of the ‘French connection’ and the ‘Bulgarian connection’ in the trade of heroin from the Asia through Europe to the US.

⁹ C. Fijnaut, ‘Researching Organized Crime’ in R. Morgan ed., *Policing Organised Crime and Crime Prevention* British Criminology Conference, 1989, vol. 4, Bristol and Bath Centre for Criminal Justice, pp. 75-85.

organised crime policy in Europe in the late 1980s were very hesitant and conscious of the American experience. In 1989 Fijnault, warned: ‘At the moment the European situation is rather like the situation in the United States in the 1960s. The policy which is developed on a national and international level usually lacks a firm empirical basis. Usually it is only dictated by the strong opinions of experienced police officers, public rumours, sensational incidents and, of course, electoral interests. This would not matter if nothing is at stake.. [but] the ungovernable fight against organized crime will lead to radical changes in the administration of criminal justice and in the principles and rules of penal law.’¹⁰

These concerns were raised in relation to the late 1980s ideas of criminal justice cooperation within the European Communities, discussed in response to negative public opinion regarding the integration process and the free movement of people with the associated removal of border checks among some of the member states.¹¹ This was caused by political necessity as there was no evidence to suggest that borders have ever effectively thwarted crime linked to international demand-supply networks, and crime in Europe appears in some senses to have known no frontiers even before these were formally abolished.¹² Europe was considered a unified space for illegal trade for a long period of time, long before the EU embarked on building the single market and free movement with the Single European Act of 1986.¹³ On the other hand, as Paul Wiles points out ‘worries about order and the basis for social trust have also been present in most late modern societies and debates about crime

¹⁰ Fijnault, for example, points out that the strict border controls existed only in theory and were concerned with the transportation of goods, capital and services, and their enforcement was very limited when it came to movement of people. Border controls could not stop the movement of terrorists between some European countries in the 1970s, for example and their efficiency for prevention of this and other types of organised criminality proved insufficient to justify their continuation once they started to hinder the development of the (legal) common market. C. Fijnault, 1989, *ibid.*, p. 76.

¹¹ M. LeBeuf, ‘On Organized Crime and Police Cooperation in the European Union – Lessons Learned. An Interview with Professor Cyrille Fijnault’, *Trends in Organized Crime*, 2002, vol. 7, no.4, pp.55-72; also C. Fijnault, 1991, *op.cit.*

¹² C. Fijnaut, 1991, *op.cit.*

¹³ Fijnaut argues member states were aware of the complexity of this issue: ‘[O]rganized crime...is always regarded as crime that is organized internationally. To the extent, however, that organized crime involves, above all, the supply of illegal goods (whether it be drugs or cigarettes or alcohol) and/or illicit services (prostitution, gambling) in black markets, it is a problem that, almost by definition, is international by nature. Yet this dimension relates primarily to the transportation of these good and services to the markets where they are distributed... Organized crime, as most member states know it, is, for the most part not international in nature but a local problem’. C. Fijnaut, 2001, *op.cit.*, p. 279.

and penal policy are often used to symbolise these broader concerns.’¹⁴ The plans to remove border controls within the European Communities were bound to raise such concerns and therefore a common law enforcement policy was discussed in the late 1980s as a compensatory measure in the Single European Act.¹⁵ A seminar on European Security and Transnational Organised Crime, organised by the European Commission acknowledged the difficulties of defining and measuring the extent of the problem but concluded that:

No matter what the precise magnitude of the problem is in objective terms, EU policy-makers need to be aware that the very *perception* that illicit trade is on the rise could have serious repercussions for the EU’s ability to maintain its economic policy stance: The EU’s economic openness could be seriously undermined if trade were perceived to be substantially subverted by organised crime – especially if economic integration of transactions in goods, services, capital and the growing mobility of people were seen as main factors contributing to the rise of illicit activities of transnational criminal organisations.¹⁶

In a self-perpetuating fashion in the course of the 1990s organised crime started to feature on the pages of major European newspapers, academic and non-governmental research, as well as political documents of parties and governments. The emergence of this new interest in organised crime in the 1990s can be illustrated and measured using some simple bibliometric techniques. According to online data English language publications presented in Table 4.1, which contain the phrase ‘organised crime’ or the ‘mafia’ before the 1990s were mainly American (they appeared to be around 4 times more than British English publications).¹⁷ There was a sharp rise of non-US publications on organised crime in the 1980s, and all publications more than doubled in number by 2004 compared to the 1970s. Data from the online edition of the British daily newspaper *The Guardian*, presented in Table 4.2, shows a very low

¹⁴ P. Wiles, ‘Crime Control and Integration’ in K. Aromaa & S. Nevala eds., 2003, *op.cit.*, pp. 10-17.

¹⁵ These plans were later re-sold as forms of deepening the level of political integration within the EU.

¹⁶ European Commission, ‘Conclusions. Summary of Main Findings of the Seminar’ in *Illicit Trade and Organised Crime- New Threats to Economic Security*, European Commission, Directorate-General for External Relations, 2000, p. 20.

¹⁷ The distinction is made by using different spelling: American ‘organized’ and European/UK ‘organised’.

Table 4.1. Frequency of occurrence of ‘organised crime’ phrase in English language publications.¹⁸

| | US ‘Organized crime’ | UK ‘Organised crime’ | Mafia |
|-----------|----------------------|----------------------|-------|
| 1970-1974 | 1162 | 283 | 998 |
| 1975-1979 | 1112 | 265 | 970 |
| 1980-1984 | 1223 | 431 | 1010 |
| 1985-1989 | 1573 | 445 | 1258 |
| 1990-1994 | 1882 | 572 | 1650 |
| 1995-1999 | 1950 | 658 | 2244 |
| 2000-2004 | 2538 | 768 | 2228 |

Table 4.2. Publications in the *Guardian* newspaper which contain the phrase ‘organised crime’ or Mafia.¹⁹

| Organised crime | <i>Mafia</i> |
|---|---|
| <ul style="list-style-type: none"> • 1992 (1) • 1993 (0) • 1994 (2) • 1995 (0) • 1996 (0) • 1997 (2) • 1998 (10) • 1999 (193) • 2000 (173) • 2001 (207) • 2002 (184) • 2003 (232) • 2004 (296) • 2005 (280) • 2006 (383) • 2007 (364) | <ul style="list-style-type: none"> • 1986 (1) • 1989 (3) • 1990 (2) • 1991 (1) • 1992 (3) • 1993 (4) • 1994 (6) • 1995 (2) • 1996 (1) • 1997 (1) • 1998 (15) • 1999 (453) • 2000 (379) • 2001 (398) • 2002 (346) • 2003 (397) • 2004 (308) • 2005 (326) • 2006 (380) • 2007 (416) |

¹⁸ It includes both US and UK publications, and those published in other states in English. The data was collected by an online search using www.googlebooks.com. The search was performed on 20th August 2008.

¹⁹ Data was gathered on 20th August 2008 from the online archive of the Guardian Unlimited at www.guardian.co.uk.

occurrence of the phrase ‘organised crime’ or the word Mafia before 1999 when there is a sharp increase from 1-15 publications to hundreds of articles containing the phrases after the New Labour government prioritised organised crime in domestic policy and the EU intensified its policy on organised crime after 1997/8.

Once the issue of organised crime began to appear more frequently in the public domain, it naturally attracted the attention of policy makers who also funded academic research. Organised crime started to appear in academic literature and international conferences. Organised crime had all the attributes to become an international issue according to theories of ‘issue emergence’ in international politics. It was: 1) identified as a problem; 2) defined as an international issue; 3) its nature violated key social norms; 4) seen as a threat to security; 5) endorsed by pre-existing structures and promoted by key international players.²⁰ Added to this was organised crime’s ability to fill in part of the gap left by the decline of the Soviet threat and its merger with ‘new security’ discourse discussed in the previous chapter.

From the 1990s and especially after the UN embraced organised crime as an international issue in 1994 and adopted its Convention against Transnational organised Crime in 2000, a number of international organisations have included organised crime or related issues in their agendas: United Nations, African Union, American Bar Association – rule of law and regional criminal justice (focus on organised crime), Commonwealth of Independent States (CIS) – OC, Council of Europe, International Crisis Group, International Monetary Fund (IMF) – anti-money laundering and corruption, NATO, G8 Summits, Organisation for Economic Cooperation and Development (OECD), Stability Pact for South-Eastern Europe – organised crime as a main area of activity (SPOC – Stability Pact on Organised Crime), Organisation for Security and Cooperation in Europe – arms control, terrorism, border management, policing, anti-trafficking (listed as ‘human dimension’), Organisation of American States, Council of the Baltic States, European Bank for Reconstruction and Development – fraud and corruption, Black Sea Economic Cooperation – organised crime as a main policy area, etc.

²⁰ C. Carpenter, ‘Setting the Advocacy Agenda: Theorising Issue Emergence and Non emergence in Transnational Advocacy Networks’, *International Studies Quarterly*, 2007, vol. 51, pp. 99-120.

The interest in organised crime was generic rather than Europe-specific but the European Union became one of the main enforcers of the new anti-crime norms developed by this framework of agencies.²¹ The European Union promoted its unique role as a leader of a new integrated approach in the fight against organised crime: ‘only the use of targeted and co-ordinated strategies in the field of prevention, reduction and combating organised crime as a whole will achieve this goal. These strategies have to be built on partnerships between the criminal justice system, public administration, scientific community, society and private industry.’²²

This produced the side effect of European states redefining their internal crime problem through the organised crime paradigm. Before the 1990s, as Paoli and Fijnault note: ‘the scientific communities, political leadership and public opinions of virtually all European countries aside from Italy considered themselves largely unaffected by organised crime.’²³ During the 1990s states within the EU and those linked to the EU through the process of accession identified an organised crime problem albeit of a different extent. The available collected statistical information on crime in Europe shows that the level of recorded (general) crime in Western European states had been stable in 1990s but the proportion of ‘organised crime’ increased as a result of the new attention this type of crime began receiving from the end of the 1980s.²⁴ The crime statistics reflected a shift of focus in criminal justice policies in Europe to ‘more serious crime’ such as drug trafficking and other forms of organised crime. There was a growing fear that organised crime or organised criminal groups were taking advantage of barrier removal and differences in

²¹ Furthermore, there was a particular interest in organised crime and related issues in European organisations, and especially those linked to Eastern and South-eastern Europe which list organised crime as a main area of activity.

²² European Commission Staff Working Paper: Joint report from Commission services and EUROPOL ‘Towards a European strategy to prevent organised crime’, Brussels, 13.03.2001, SEC(2001) 433.

²³ L. Paoli & C. Fijnault, ‘Organised Crime and Its Control Policies’, *European Journal of Crime, Criminal Law and Criminal Justice*, 2006, vol. 14, no. 3, pp.307-327.

²⁴ According to the EU statistics agency Eurostat statistics on crime in Europe for 2007 the data for core 14 EU Members shows that crime rose with 0.6% in the period between 1995 and 2005, with a peak in 2002 and downward trend since that year. According the Eurostat findings, the types of crime on the increase were robbery, violent crime and drug trafficking. The crimes which have been on decrease are domestic burglary, homicide and motor vehicle theft. This was the first crime data published by Eurostat as the agency did not collect data on crime within the EU until the Hague Programme adopted by the European Council in 2004 which proposed that Eurostat should establish European instruments for collecting, analysing and comparing information on crime and victimisation using national statistics and other sources of information.

domestic legislation in Europe which was increasingly merging into a single market for legal but also illegal goods and services. To some, the very existence of the European Union 'with its rules and aims, is itself a push factor to the spreading of organised crime'.²⁵ In the course of the 1990s therefore the issue of organised crime moved from perceptions to an argued observable and measurable reality.

4.3. Assessing and defining organised Crime in Europe

The attempts to measure and assess organised crime in the EU exposed a number of practical problems for the development of a common policy. Apart from the usual methodological difficulties of detecting, measuring and recording organised crime, the first attempts to depict the organised crime situation in the whole of Europe were obstructed by the different types of national legislation and policing which made any comparative criminological survey a very complicated, if not impossible, task. The different EU members had different ways of recording and interpreting crime and organised crime in the different countries and did not even have a structure for national collection of intelligence on organised crime.²⁶ The data varied depending on the domestic legislation, the practice of police recording or theoretical approaches

²⁵ E. Savona, 'Recent trends of organised crime in Europe: Actor, Activities and Policies Against Them', Paper presented at UNAFEI 108th international seminar, Japan 1998. Savona also points at the direct role that the EU plays in the development of organised crime rings on its territory. He argues that the fraud business affecting the European Communities had led to the set up of 'extensive organised crime networks... which have grown into well-established criminal trading communities' in certain European countries, namely Belgium, the Netherlands, Portugal and Italy. *Ibid.* Fijnaut however who does not deny the existence of the EU fraud phenomena still doubts the extent of the penetration of large-scale EC fraud by organised crime and even its financial consequences for the EC. C. Fijnaut, 'Transnational Organized Crime and Institutional Reform in the European Union: The Case of Judicial Cooperation' in P. Williams & D. Vlassis eds., *Combating Transnational Crime – Concepts, Activities and Responses*, London: Frank Cass, 2001, pp. 276 – 301.

²⁶ This problem is described by van der Heijden: 'In Belgium, only the data of one of the three types of police, the Gendarmerie, were available. In Germany each State Criminal Police Office (Landeskriminalamt) of the sixteen federal states prepared a situation report on organised crime for the respective Federal state on the basis of an outline developed by a national commission which served as its contribution to the 1994 Situation Report in the Federal Republic of Germany... In the UK, information on ethnic groups involved in organised crime is available on a national level along with specific data on a number of core individuals, but at that point in time there was no way to establish the number of organised crime groups in a manner similar to other EU member states. In the UK and in the Netherlands the national reports were based on criminal intelligence data, which can be described as 'soft', while other member states use 'hard' data derived from formal protocols or crime statistics. Some countries included information on dismantled groups in their national reports, while other member states only provided information on active criminal groups'. T. van der Heijden, 'Measuring Organized crime in Western Europe' in *Policing In Central And Eastern Europe: Comparing Firsthand Knowledge with Experience from the West*, College of Police and Security Studies, Slovenia, 1996 [online] <http://www.ncjrs.org/policing/mea313.htm> accessed 19/10/2001.

and influences.²⁷ As a result, much of the official documentation dealing with organised crime in Europe represents the phenomena from a national rather than a European perspective.²⁸

This problem became obvious with the first attempt to measure organised crime in Europe made in 1994. A questionnaire containing six questions about the organised crime situation in each respective country in 1993 was sent to the EU member states but quickly showed odd results, such as Italy reporting four organised crime groups, and the Netherlands reporting 321 organised crime groups.²⁹ It appeared that Italy, traditionally associated with the Mafia had a smaller problem with organised crime than the Netherlands. The numbers did not reflect the same reality of organised criminal groups which in the Netherlands are rather smaller and loosely knit compared to the Italian type of criminal organisation, and they do not appropriate territory and use much less violence. As far as the political and economic power of the criminal groups is concerned this is only to be found in Italy, where it is believed to have ‘a grip’ on policies and public administration, and controls significant sectors of the economy.³⁰

²⁷ This is also valid for all crime statistics. According to Paul Wiles, director of Research, Development and Statistics at the Home Office, UK, the level of crime and criminal/penal policy varies significantly across Europe and it is not clear to what extent these differences occur because of recording practices, or they reflect different level of crime. One of the main differences in crime recording practices amongst the European countries is that ‘in some countries a crime is recorded at the point when a victim reports a crime to the police but in others at the point of arrest or charge.’ Furthermore, Wiles points out that not all police forces record crime in the same way and the rules of what crimes are to be recorded change which may change crime figures. In England and Wales for example, the desire to serve the public better has ironically led to a rise of recorded crime rate as the introduction of a new uniform standard in 2001 required the recording of all crimes (‘no matter how trivial’ so that the government would be aware of the crime situation in the country, and also to appear more victim-focused) led to a 25% increase of recorded crime. If statistics are adjusted accordingly, Wiles argues, then the crime rates in England and Wales are falling and this is a common European and North American trend. The increased crime rates however have led to increased fear of crime and have resulted in tougher anti-crime policy and increased prison population – a development which contradicts the reality of decrease of criminality. P. Wiles, 2004, *op.cit.*

²⁸ Council of Europe, ‘Report on Organised Crime Situation in Council of Europe Member States – 1999’, European Committee on Crime Problems (CDPC), 2000 International Crime Assessment, Joint report of US Governmental Agencies [online] <http://www.fas.org/irp/treat/crime.html> accessed 3/04/2003.

²⁹ The survey was conducted by the Working Groups Drugs and Organised Crime as instructed by the Council of Ministers of Justice and Interior Affairs in 1993. The Council had decided to ask for an annual report on the scale of and trends in international organised crime. T. van der Heijden, 1996, *op.cit.*

³⁰ P. Williams & D. Vlassis, 2001, *op.cit.*, p. 278.

Later efforts also showed that it was difficult to find common trends in the composition of organised criminal groups across Europe, and their organisational structure, areas of criminal activity, and extent of criminal activity all differed by state or region.³¹ For example, the group of Scandinavian countries identified local motorcycle gangs as the major organised crime problem in their jurisdiction while others were concerned about criminal groups with exterritorial or external origin. The 1995 EU Situation Report on Organised Crime showed that organised crime groups active in the Union are primarily foreign and heterogeneous in composition although all of the countries had discovered domestic criminal organisations.³² These findings were contradicted by the 1999 Report on Organised Crime Situation in Council of Europe member states which found that the organised criminal groups in the Nordic countries are mostly composed of nationals and in the Netherlands half of the suspects had Dutch origin. The United Kingdom reported 82% of organised criminals were of national origin. Greece, too, reported a majority of domestic organised criminal groups. Spain, Germany, Switzerland and some small states reported high level of heterogeneity of the criminal groups whose composition showed a high number of domestic mixed with foreign criminals. Some of the Eastern European countries identified a higher percentage of foreign organised crime compared to domestic (Slovenia, the Czech Republic) but in general organised crime in Eastern Europe was identified as mainly local in origin and membership.³³

The identification of a ‘foreign element’ in organised crime in Europe however, was not in itself a particularly useful discovery as in itself ‘foreignness’ was no basis for similarity. The foreign links or composition of organised crime groups is usually related to cultural or historical connections, such as the South-American link in Spain and Portugal, immigration, or geographical proximity, such as the Northern African

³¹ Initially the lack of common definition of organised crime was overcome by the adoption of a common assessment mechanism developed on an expert level. This was driven by the aspiration to identify a common problem or a synthesis of similar problems, on basis of which action was to be taken. The member states had to collect information on organised crime according to a list of 11 characteristics, of which at least six had to be present and three were obligatory for identifying organised crime. The characteristics contained both ‘organised crime’ and ‘organised criminal group’ approach in order to overcome differences in the situation and data collection of member states. T. van der Heijden, 1996, *op.cit.*

³² Most of the groups identified in EU member states were of South-American, Turkish, Chinese, Russian origin but also Italian and Dutch origin which is also classified as ‘foreign’.

³³ Report on Organised Crime Situation in Council of Europe Member States - 1999, Council of Europe, European Committee on Crime Problems.

link in France, and Eastern European and Turkish crime in Germany, Austria and Greece.³⁴ There was also some inter-EU crime mobility, such as Italian and Dutch links found in many EU countries.³⁵ Although a big proportion of crime activities were linked to illegal trafficking of drugs or people, the methods, type of trafficking and routes were different in the separate EU states or regions. Other more localised criminal activities across Europe include forgery, robbery, extortion, property crimes, illegal trade in firearms, illegal gambling, etc. All of these differences and local specifics created problems for developing a common approach to organised crime in the EU, which turned out to be a time and resource consuming process.³⁶

Despite these problems, even more efforts were put into the EU anti-crime project. One of the main tasks of the 1997 Action Plan to Combat Organised Crime was to produce Organised Crime Situation Reports (OCSR) on an annual basis and with improved methodology for measuring organised crime. The aim of OCSR was to contribute to harmonisation and standardisation in qualitative data collection and to develop the use of a threat assessment methodology for determining the conditions and causes of organised crime. However, these plans were not fulfilled, and the emphasis in OCSR changed in 1999 and 2000 from ‘the description of current and past situations to assessment of threats and risks related to future developments in crime and their implications for law enforcement within the EU.’³⁷ The report was to be compiled by the Police Chiefs Task Force (PCTF) and Europol. These arrangements were not straight forward and some adjustment from the participating agencies was needed. By 2001-3 the name of the report was changed to simply

³⁴ Identification of immigrant crime was also higher in the countries which more recently became immigrant destinations such as Spain, Portugal and Greece.

³⁵ T. van der Heijden, 1996, *op.cit.*

³⁶ This was identified by the authors of a 2007 study of the normative basis developed by international organisations in the area of terrorism and organised crime fighting which concluded that ‘A huge number of legally binding and non-binding decisions relevant for terrorism and organized crime of the European Union exist - falling under the first, second and/or third pillar of the EU. Thus it was not possible to complete the comprehensive research of decisions relevant for terrorism and organized crime within this paper... Additionally, during the ongoing research process, it became apparent that the research itself was very time-consuming, complicated and confusing.’ ETC Study for the HUMSEC Project, 2007, *op. cit.*

³⁷ The report was to be compiled by the Police Chiefs Task Force (PCTF) and Europol. K. Verpoest & T. Vander Beken, ‘The European Union Methodology For Reporting On Organised Crime’ in *The European Methodology for Reporting Crime*, Report for Sixth Framework Project ‘Assessing Organised Crime: Testing the Feasibility of a Common European Approach in a Case Study of the Cigarette Black Market in the EU’, 2005 [online] <http://www.sprinxdata.com/AOC/publications/AOC-DLV-EU-methodology-vF1.pdf> accessed 29/09/2008,

Organised Crime Report (OCR) which was to be ‘more threat, trend, assessment, and future oriented’ and ‘more ‘customer’ oriented by allowing the Heads of the National Units (HENUs), the PCTF and other decision-makers to have a say in its overall structure and orientation.’³⁸ Since 2006 OCSR has been replaced by Organised Crime Threat Assessment (OCTA). Despite some improvements in each subsequent report, all of those reports have been subject to criticism, especially for being focused primarily on the criminals rather than the environment in which they operate.³⁹

Apart from crime reports, the EU adopted an organised crime definition to facilitate policy and data collection as some countries did not have such a definition prior to the emergence of the issue in the early 1990s. Initially a consensus was reached on using a definition based on the basis of a number of characteristics (11), four of which had to be present (in bold):

1. **collaboration of more than two people;**
2. each with their own appointed tasks;
3. **for a prolonged or indefinite period of time** (this criterion refers to the stability and (potential) durability of the group);
4. using some form of discipline and control;
5. **suspected of serious criminal offences;**
6. operating on an international level;
7. using violence or other means suitable for intimidation;
8. using commercial or businesslike structures;
9. engaged in money laundering;
10. exerting influence on politics, the media, public administration, judicial authorities or the economy;
11. **motivated by the pursuit of profit and/or power.**⁴⁰

³⁸ *Ibid.*

³⁹ *Ibid.* ‘The data which are collected and analysed in response to the set up of the OCR, are all focussed on criminal groups and their activities. The list of topics to be examined is totally related to the definition of OC and thus directly linked to the aspect of criminal groups, their modi-operandi and the used counter-strategies.’ *Ibid.* p.6-7.

⁴⁰ T. van der Heijden, 1996, *op.cit.* However, this definition was not officially accepted and often criticised for not being straightforward and differing from state to state. K. Verpoest & T.Vander Beken, 2005, *op.cit.*

The definition was broad to ensure that a larger scope of crimes could be interpreted as ‘organised crime’ which could allow wider international cooperation. The discussions of an official EU definition continued throughout the 1990s and 2000s.⁴¹ The lack of accepted definition did not, in fact, matter as in practice, the EU focused on particular types of crimes, which were identified as Europe-wide and of external origin, such as drug trafficking and people smuggling. Additionally, the activities of the new EU anti-crime institutions focused on the external sources of crime, and especially Eastern Europe. Reports on organised crime were a reflection of this tendency to focus on foreign and especially Eastern European crime.⁴² This was not only caused by an identification of a new threat from those regions but also due to the easy platform for building common policies, especially in relation to enlargement. Thus the ‘need’ to help transition and democratisation in Eastern Europe coincided with the ‘need’ to build the anti-crime policy in Europe, and these conditions created a strong impetus for the policy, which did not exist prior to the 1990s.

4.4. Historical context to Europe’s anti-crime policy

The anti-crime agenda led to the possibility of creating what Harding called a ‘European criminal law space’⁴³ and the possible delegation of real regulatory power in the criminal law area to the EU institutions. The issues, which hampered the development of international policy on crime, were of different origin but usually defined in literature as related to issues of politico-juridical sovereignty. Nelles points out that within the EU, ‘criminal law and the right to punish are still regarded as lying within the sovereignty of nations, i.e. also of the member states of the European Union ...[and] up to now the Union has not been formally empowered to

⁴¹ By 2005, another definition was agreed upon and it was similar to the UN definition. Organised crime was defined as ‘a structured association, established over a period of time, of more than two persons, acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, as a means of obtaining, directly or indirectly, financial or other material benefits’. European Parliament legislative resolution on the proposal for a Council framework decision on the fight against organised crime (COM(2005)0006 – C6-0061/2005 – 2005/0003(CNS)).

⁴² This is a trend observed in Europol’s activities, publications on crime and their reports on threat assessment.

⁴³ C. Harding, ‘Exploring the intersection of European law and national criminal law’, *European Law Review*, 2000, vol. 25, pp. 374-390.

establish Criminal law as such.’⁴⁴ The anti-crime policy on the EU level in fact remained entirely intergovernmental before and after the 1990s and a subject of international treaties and their ratification, or other forms of interstate cooperation, harmonisation or assistance in criminal matters between sovereign states. This was compensated for by an increasingly high number of initiatives on executive level. These initiatives in effect institutionalized the previously existing informal cooperation between the police forces of EU members by establishing and promoting a formal coordinating body under the name of Europol with some level of independence from state governments but limited powers. The JHA area of cooperation developed after 1992 did not create common laws or even justice policy under EU leadership by the EU but it remained a cooperative effort on the part of national justice and interior ministries to align their policies, and introduce commonly agreed legal amendments.⁴⁵

The problems of expanding criminal justice beyond state borders are not new. There is a history of states’ efforts to prosecute crimes beyond their borders and a number of initiatives to develop an international framework of cooperation in criminal justice. Literature on recent European policy in the area usually links the 1990s developments to such initiatives going back to the early twentieth century. On the one hand, the contemporary developments in international criminal justice are a continuation of these initiatives but on the other hand, the recent developments are provoked by different concerns and have had a different and much more intense development. The policies before the 1990s however encountered similar political and judicial constraints linked to state sovereignty.

Interpol

The first attempt at international policing in Europe was related to the perception of a common problem with violent anarchist groups. This prompted the First International

⁴⁴ U. Nelles, ‘Steps Towards Harmonisation – Steps Towards friction’ in K. Aromaa & S. Nevala eds., *Crime and Crime Control in an Integrating Europe* Plenary, Presentations held at the Third Annual Conference of the European Society of Criminology, 2003, HEUNI, Publication Series N44, Helsinki, Finland, pp.75-84 [online] <http://www.heuni.fi/uploads/y4m8w9.pdf> accessed 24/04/2006.

⁴⁵ Most notably the introduction of ‘membership in criminal organisation’ offence.

Criminal Police Congress organised in Monaco from 14th to 18th of April 1914. The Congress was attended by legal experts and police officers from 14 countries and territories who discussed the idea of establishing an international criminal records office and harmonising extradition procedures. The initiative did not develop much further, partly linked to the outbreak of the First World War. However, the period between the wars saw the launching of the Second International Criminal Police Congress held in Vienna in 1923, which set up the International Criminal Police Commission (ICPC) – an initiative triggered again by post-war political turmoil in Europe, linked to social and economic problems which were in fact leading to the next war in Europe. The IPIC had its own Statute and official headquarters in Vienna. It initially comprised 20 member states and extended to 34 in the 1930s. Despite its initial success the IPIC remained limited within its European foundations and was gradually abandoned. The failure of the IPIC was interpreted as a sign of the escalation of disagreements between the European powers on the eve of the Second World War. The members could not develop a workable agenda on their common problems and the ‘political’ overshadowed any productive cooperation between their police organizations. The attempt to resolve such complicated internal issues with international cooperation proved futile.

After the Second World War there was a renewed enthusiasm for re-building the world around the vision of cooperation and integration, which included international policing structures. The ICPC was re-instated at a conference in Brussels with a new statute and new headquarters in Paris (Vienna was still occupied by the Soviet army). In 1956 the ICPC became the International Criminal Police Organisation - Interpol. For almost a quarter of a century this was the only institutionalised means of police cooperation in Western Europe which also claimed a role outside the continent. However, Interpol was not a European organisation in the sense that Europol today is. It was not established under the banner of fighting a common enemy and was not linked to a territorial jurisdiction.⁴⁶ Interpol never became an international police

⁴⁶ Interpol was not a part of any international political structure and could not be used for tackling sensitive issues such as terrorism. According to Article 3 of Interpol's Constitution, the organisation is forbidden ‘to undertake any intervention of activities of a political, military, religious or racial character’. This appeared to be a problem during the 1970s when there was a wave of terrorist attacks in some western European countries. Terrorism, although a subject of ordinary criminal law in most countries, has political implications and thus was a ‘forbidden’ area for Interpol. This led to the creation of a separate body, the Trevi group, whose initial area of expertise was terrorism. The group

force with operational capabilities. Its main purpose was to enhance the exchange of intelligence, to serve as a databank and to promote harmonisation of operational practices and equipment. Moreover its input in international policing cooperation was riddled by Cold War antagonisms and power struggles, and state rivalry.⁴⁷

On the other hand, its political effect was significant and visions of creating an international policeman grabbed the imagination of many political leaders. There were ideas for the formation of a European Central Office within Interpol or even for the creation by the EC of a 'supranational criminal investigation department' (Europol). The latter proposal was vigorously defended by German police officials, and by Germany, linked to its support for a more federal Europe.⁴⁸ However, most of the members, and Interpol itself, were satisfied with the *status quo* and the membership of the organisation grew as it continued to be based on the principle of sovereignty and equality. There was no support for the idea of expanding Interpol's roles and especially allowing any external interference in the legal affairs of its member states. According to Article 2 of its Constitution, Interpol aims 'to ensure and promote the widest possible mutual assistance between all criminal police authorities, *within the limits of the laws existing in the different countries* and in the spirit of the 'Universal Declaration of Human Rights [and] [t]o establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes' with no intention to promote legal changes in its member

was formed by the executive bodies of the member states (thus, it was incorporated into the political structure). Today terrorism is covered by Interpol which was made possible by a peculiar arrangement in a resolution adopted in 1984. According to it offences are not considered to be political when they are committed outside a 'conflict area', and when the victims are not connected with the aims or objectives pursued by the offenders.

⁴⁷ A central problem with Interpol was the unwillingness of some member states (especially the US) to give information for its database because of the fact that Interpol had (and still has) a wide membership (in 1997 it included 177 countries), and the fear of misuse of information between them. The problem was later partly settled by introducing requirements for access to Interpol's database and in particular - the prior approval of the state that had issued the information before disclosing it to another member. This settlement by itself shows the complexity of the procedures through which Interpol has to operate in order to overcome the unfavourable legal conditions for mutual assistance in criminal matters, i.e. the asymmetry of the adjustments in two interdependent areas - policing and law.

⁴⁸ There were two 'groups' in Europe in terms of opinion on how to proceed with police co-operation within the European community. On one hand there were countries, among which Germany was most active, who advocated 'deepening' of European integration, including the establishment of a more coherent police and criminal justice framework of collaboration. On the other hand, France, as well as the United Kingdom, defended 'national sovereignty' in criminal matters. As a result, as we can see from the later development in this area, a number of structures and arrangements (formal and informal) were created within the Community or among its member states on a bilateral or multilateral basis, which shared common goals (as well as members and even staff) and none of them managed to really establish a supranational means of tackling the problems of crime.

states.⁴⁹ Indeed such a task would have been impossible given the unclear status of Interpol, which in fact has never been established as an international organisation in accordance with international laws. For all those reasons Interpol has never been able to overcome the sensitive national issues, to impose legislation or binding international regulations. Perhaps for that reason in the 1980s some preferred to extend the role of Interpol over the idea to establish similar a structure within the European Communities.⁵⁰

Council of Europe

The first institutionalised interstate cooperation in crime prevention and criminal justice of purely European scope was within the organisation of the Council of Europe (CE) – which is known to be ‘the oldest ‘Europe’ in legal respect’.⁵¹ In 1956 the Committee of Ministers of the CE adopted Resolution (56)13 on the prevention of crime and the treatment of offenders, which was to establish cooperation between the CE and the UN European Consultative Group working in the same field. The resolution established crime on the agenda of the CE. The function of the CE laid more in the field of recommendations, adoption of measures that all members agree on, such as extradition, but it remained very limited in its approach to organised crime until the 1990s.⁵²

⁴⁹ ICPO-INTERPOL Constitution and General Regulations [online]
<http://www.interpol.int/public/icpo/legalmaterials/constitution/constitutionengenreg/constitution.asp>
accessed 30/04/2008 (my italics).

⁵⁰ Cyrille Fijnaut, for example, refers to two reports on organised crime in the EC countries produced by the EP and the Council of Europe in 1986: A striking detail in these two reports is that they both voice an explicit preference for the reinforcement of the task of Interpol within western Europe rather than an extension of TREVI. This makes it clear that there is a huge difference of opinion between individual national governments on the one hand and the members of the EP and the Council of Europe on the other concerning the basis on which police co-operation in western Europe might proceed. C. Fijnaut, 1993, *op. cit.*, p. 114.

⁵¹ U. Nelles, 2004, *op.cit.* The Council of Europe (CE) was founded in 1949 with an emphasis on promoting internationally legal standards in the area of human rights, democracy, rule of law and culture. It has traditionally had a ‘soft’ politics approach. However, the issues which it promoted were the ‘issues’ of the day, similar to crime in the 1990s. Human rights, democracy and rule of law were the so-called ‘ideological’ tools of the West for undermining the Soviet regime.

⁵² After the end of the Cold War the Council of Europe became a key East-West international organisation in Europe (as opposed to exclusively Western EU until its first Eastern enlargement in 2004). There was an increased anti-crime and anti-terrorism activity within CE after 1990, and it was particularly active in linking the two issues, and lobbying for the criminalisation of terrorist activities. Additionally, the CE focused on harmonising legislation and facilitating international and local cooperation in the area of corruption, cybercrime, organized crime, economic crime, money laundering, trafficking in human beings. For an overview see ETC Study for the HUMSEC Project, 2007, *op.cit.*

In 1958 a special European Committee on Crime Problems (ECCP) was set up which functioned through various sub-committees and working groups.⁵³ The main task of ECCP was harmonisation of the member states' legislation relating to penal law, penal procedure and prison administration. Apart from studying the problems in these areas, the Committee and EC in general managed to establish international cooperation with practical results. Among them are a number of resolutions and measures in the field of extradition, mutual assistance and transfer of proceedings in criminal matters, international terrorism, control over firearms, drugs, etc.⁵⁴

In 1971 the CE also became the framework within which the first policing co-ordination body in Europe was established, the so-called 'European Group to Combat Drug Abuse and Illicit Traffic in drugs', also known as the Pompidou Group, named after its creator - the French President Georges Pompidou. The Group's task was to co-ordinate its 19 member states' efforts to fight the traffic and consumption of illegal narcotic drugs. Despite its achievements in this particular area of international crime, the members of Pompidou Group did not agree on the need for joint action on other areas. The CE's role in international criminal justice policies was later overshadowed by the European Union, which had more capacity for such policies. The Council remained an important international forum for anti-crime and anti-organised crime initiatives in the 1990s but the rising political significance of the EU placed the Union in the centre of the European law and order regime, dealing with issues ranging from terrorism and football hooliganism, to illegal immigration, fraud, drug trafficking, and other fights against organised crime.

⁵³ Two decades later the Trevi Group which was created to discuss issues on crime within the European Communities adopted a very similar structure.

⁵⁴ The key conventions adopted by the Council, which are still in force, are the CE Convention on Extradition (1957), the Convention on Mutual assistance in criminal matters (1959) and the Convention on the transfer of sentenced persons (1983). According to Nelles, they are designed to ensure the application of the safeguards and procedures traditionally applied to international co-operation in criminal matters. Apart from human rights protection, she suggests that the two main principles of the conventions are: 'Legal assistance is only to be given, if the crime concerned is a crime not only in the requesting but also in the requested state (principle of dual or double criminality). Legal assistance must not be given, if the principle of *ne bis in idem* was inflicted by the requested state (principle of double jeopardy)'. U. Nelles, 2004, *op.cit.*

The efforts for developing some form of cooperation in home affairs within the European Communities began as early as the 1960s, after an initial agreement was reached on the Common Agricultural Policy and the potential risk of fraud was identified. If this was the start of home affairs cooperation, however minimal, then it predated foreign policy cooperation.⁵⁵ At that time however, the member states did not manage to adopt any conventions against this possibility. The cooperation was only formalised in the mid-1970s after the European Council of Rome in 1975 set up a consultative body within the European Political Cooperation (EPC) to examine possibilities for cooperation in the area. In June 1976 in Luxembourg the Ministers of Internal Affairs adopted a resolution for the formation of a set of study groups, established as part of a body which was to be called Trevi.⁵⁶ This project was started by the EU members (a German and British initiative) states in connection with terrorist actions in several European countries in the mid-1970s and it was originally set up to enhance cooperation in the fight against terrorism (which fell outside the prerogatives of Interpol), as well as the exchange of information, equipment and training of police units. However, the role of Trevi was later expanded to cover not only terrorism but illegal immigration, border control, drugs trafficking and serious crime.

International ‘serious crime’ - a concept which comes close to ‘organised crime’ but is defined by severity of sentencing - became part of Trevi's concerns in 1985 when a special working group was set up to deal with it (WG III). This caused the first significant duplication of areas of competence between international bodies since international crime was also the main target of Interpol. According to Fijnaut there were several different reasons for Trevi's broadening roles – officially, it was because of ‘the close relationship between terrorism...and other forms of organised crime’, but the broadening also reflected the inclusion of organised crime in the area of ‘European public order’, or because ‘European politicians ...[had to]... continuously

⁵⁵ S. Peers, *EU Justice and Home Affairs Law*, London: Pearson Education Limited, 2000, p. 9.

⁵⁶ The origins of the name are not quite clear. It is commonly accepted that TREVI stands for ‘terrorism, radicalism, extremism and international violence’ (the position of the ‘I’ comes from the French word order for ‘international violence’, although in some sources it is interpreted separately as ‘internationalism’ and some sources claim the name derived from the famous fountains in Rome. C. Fijnaut, 1991, *op. cit.*

create new stimuli to keep alive the idea of the European Community'.⁵⁷ Trevi remained an intergovernmental body with no supranational powers, it was not institutionalised and had no staff, headquarters or budget and the responsibility for its functioning laid on the national presidency of the current six-month period, i.e. the respective Minister from the Member State holding the Council of Ministers presidency. It was also a highly secretive institution and most of the documents and measures were adopted outside of the EU framework (before Maastricht) and were neither published in the *Official Journal*, nor debated in the national parliaments or by the public. The European Parliament had no role either since Trevi was an intergovernmental framework, carried out exclusively by member states' executives. This arrangement made monitoring, control and evaluation of Trevi's work impossible. From what is known about the work of Trevi it made regular analyses, produced strategies and tactics and enhanced the exchange of information and know-how. It was not dealing with regulations or common positions or interfering with matters 'internal' to the member states, including their legislation or law enforcement, in other words it was entirely utilitarian and reactive (i.e. following the events). This practical role, added to the secrecy of Trevi's activities, was probably the key to the relative success of the structure. Lack of accountability gave it a degree of freedom and flexibility. Nevertheless, Trevi reached its official end - it was replaced under the Maastricht treaty by the new European Council on Justice and Home Affairs, the so-called K4 Committee, three Steering Groups and their Working Parties.⁵⁸

The intergovernmental form of cooperation in internal affairs such as criminal justice and law enforcement discussed were appropriate to the stage of developing European integration. However the situation did not change after the adoption of the Single European Act in 1986 with the agenda to abolish internal frontiers by 31 December

⁵⁷ C. Fijnault, 1991, *op. cit.*, p. 110.

⁵⁸ Some critics pointed that this attempt to incorporate Trevi in the more accountable structures of the EC has only moved it 'from the secrecy of its intergovernmental status to become 'secret' within the framework of the European Community' as the European Parliament was to be consulted and allowed to ask questions but the new committee was not going to be accountable to the parliament in any democratic sense; power remained with the 12 governments, and Europol was to be run by senior officials and report to the heads of states – all of which in effect continued the secrecy and exclusion of the parliaments and the public from the debates.

Statewatch, Artdoc Jan 93 - Trevi, Europol&Immigration [online] <http://www.statewatch.org> accessed 21/03/2003.

1992. But the implications for crime and policing within the territory of the common market were taken into consideration after SEA was completed. Thus the Act did not change the informal structure, i.e. Trevi that had existed before it, except in terms of the creation of more working groups. The reason was the anticipated need for greater co-ordination of immigration and asylum matters after the abolition of the internal borders. At the same time another initiative linked to policing and border controls was taken up: the Schengen Agreement.

Schengen

The Schengen Agreement (1985) and the subsequent Schengen Convention (1990) established a very successful platform for police cooperation among several EU states. Initially Schengen developed outside the structures of the EU and did not include all of the Union's member states.⁵⁹ The Agreement aimed to provide compensatory measures for an area without internal frontiers, to promote greater cooperation between the police forces of the member states and their judicial systems (incl. in the suppression of drugs trafficking); harmonisation of immigration, asylum and visa policies, as well as the creation of a Schengen Information System (SIS).⁶⁰ The purpose of the Agreement was to facilitate the removal of checks at common borders by replacing them with external border checks (as a compensatory measure); a common definition of the rules for crossing external borders and uniform rules and procedures for controls there; separation in air terminals and ports of people travelling within the Schengen area from those arriving from countries outside the area; harmonisation of the rules regarding conditions of entry and visas for short stays.⁶¹ The Schengen area was criticised for building a 'Fortress Europe' because of the tight measures taken to prevent 'undesirable' aliens from entering its territory.

⁵⁹ The Agreement was initially signed only by France, Germany and the Benelux countries in 1985. Ten years later it was incorporated in the EU *acquis* through the Schengen Implementation Agreement (1995), signed by all EU states except for the UK and Ireland. The UK opted-out because it viewed it as a German agenda and another step towards federalism; Ireland followed the UK position.

⁶⁰ The Schengen Agreement provided for international prosecution, i.e. following defendants across borders, and setting up 'law enforcement agencies at the boundaries where the officers in fact exchanged information in a very informal way'. U. Nelles, 2004. *op. cit.*

⁶¹ The policies developed under Schengen and linked to organised crime are the introduction of cross-border rights of surveillance and hot pursuit for police forces in the Schengen States; the strengthening of legal cooperation through a faster extradition system and faster distribution of information about the implementation of criminal judgments. SCADPlus (no date) 'The Schengen *acquis* and its integration into the Union' [online] <http://europa.eu/scadplus/leg/en/lvb/l33020.htm> accessed 01/12/2006.

The Agreement's immigration policy was for the first time linked with criminal justice and policing: the Schengen Information System (SIS) which was later developed contained data both on criminals (convicted or suspects) and 'aliens classified undesirable by one of the countries' (not necessarily criminals), asylum applications and refused applications.

Despite its limited number of members, the Schengen's plans did not develop very smoothly at first. The proposals for harmonisation of the policies on drugs, firearms, terrorism and illegal organisations, as well as for improvement of international judicial aid, exchange of police information and border controls, were supposed to be ready at the beginning of 1987 but in fact took much more time and effort. Some of these issues caused considerable political dispute and disagreement among the signatory countries. For example, the idea of introducing identity cards and other means of identification, or adopting tougher laws on soft drugs were not accepted by the Dutch public. At the same time, their tolerance for soft drugs led to antagonistic reactions from France (which continued with the border checks) and other countries. Guyomarch points out one additional reason for the delay, namely the changes in Eastern Europe at the end of 1980s and the subsequent change in the East-West European relations (an immediate obstacle in that respect being the reunification of eastern and western Germany).⁶² The Schengen Agreement, similar to all the other previous and forthcoming initiatives concerning home affairs, was criticised for lacking democratic scrutiny - there were no provisions for parliamentary and very little for judicial control over it. Moreover, the Schengen Convention grants the main body - the Executive Committee (consisting, of Ministers and Secretaries of States of member states) the right to 'decide its own rules of procedure and to set up any working groups it wishes.'⁶³ Nevertheless, the Schengen agreements are regarded as 'the blueprint of cooperation between and among national authorities in the field of cross-border law enforcement in accordance with the (later) EU treaties of Amsterdam and Nizza'.⁶⁴

The initiatives discussed in this section are usually interpreted as the predecessors of

⁶² A. Guyomarch, 'Problems and Prospects for European Police Cooperation after Maastricht' *Policing and Society*, 1996, vol. 5, pp.249-261.

⁶³ *Ibid.*

⁶⁴ U. Nelles, 2004, *op.cit.*

the 1990s anti-crime policy of the EU. Pre-1990s international cooperation in criminal matters had an *ad hoc* nature and was not a part of a formalised strategy of developing a supranational policy at the expense of national sovereignty in the area of criminal justice and law enforcement. They have remained intergovernmental in nature, and taken the form of international treaties, which according to some has limited their effectiveness.⁶⁵ The initiatives were not specifically targeting organised crime and did not seek harmonisation of law or state policy against this type of crime. Yet the near century-long protracted history of international criminal justice convergence and the series of semi-successful initiatives have helped to lay the basis to the discourse and policies which ‘securitised’ international crime in the 1990s.

4.5. The emergence of the European Union’s Governance in Justice and Home Affairs

The idea of using the European Union structures for more effective international action against crime in Europe received attention in the late 1980s but did not automatically translate into a common policy with transfer of power to the EU institutions. In the course of the 1990s there was a relocation of some policy-making in criminal justice area (but not real authority) to the EU level. What the EU developed was a peculiar form of ‘governance’, which Monar defines as ‘a special regime within the EU, based on a novel mixture of Community and intergovernmental characteristics and quite distinct from EU governance in other policy areas.’⁶⁶ As criminal justice and ‘law and order’ are special areas where the state exercises its sovereignty, these new ideas of governance suggested ‘a rupture with a state-centred approach to government which had come to dominate political

⁶⁵ The problem with treaties and conventions is that they need to be ratified by the signatory states and that does not always happen. For example, the 1991 Convention on the enforcement of foreign criminal sentences for instance has never come into force. *Ibid.*

⁶⁶ J. Monar, 1999, *op. cit.* The term ‘governance’ has traditional meaning which refers to the process of management but here governance is understood in a wider context as a system of collective problem solving in the public sphere, which is carried out by non-authoritative actors, in conditions of dispersed or fragmented political or legal authority. See J. Rosenau & E. Czempel eds., *Governance without Government. Order and Change in World Politics*, Cambridge: Cambridge University Press, 1992. The discourse of governance replaces previous ideas of government where the responsibility for policy is located in a specific body. In conditions of governance responsibility (although not necessarily real power) is spread amongst different actors. In can be seen as horizontal dispersion of policy-making and responsibilities (government, agencies, NGOs, different political and non-political organisations within and beyond the state) as opposed to vertical with government and governed.

thinking, policy and practice.’⁶⁷ Behind the term ‘governance’, however, was a process of institutionalising the largely informal cooperation in criminal justice which had developed before the 1990s in an attempt to further ‘democratise’ and reinforce the political image of the European Union. This process was initiated by the Maastricht Treaty and the establishment of the EU’s Justice and Home Affairs pillar.

Maastricht Treaty: Justice and Home Affairs

The significance of the changes which the Maastricht Treaty (or the Treaty of the European Union, TEU, 1992) brought to the previously sovereign area of criminal justice is summarised by Peers:

Pre-Maastricht, the formal role of the EU institutions in Justice and Home Affairs cooperation was nil. All negotiations were treated as discussions between the member states, and any resulting acts were classified as acts of the member states pure and simple. It went without saying that all agreements had to be reached unanimously. The Commission was invited to be an observer in these intergovernmental talks, but purely with the view to defending the interests of the Community law. The European Parliament was rarely asked for its opinion on specific or general developments, but it sometimes gave it anyway. There was no more extensive role for the EC political institutions in the most ambitious product of intergovernmental JHA cooperation – the Schengen Agreement of 1985, followed by the Schengen Convention of 1990s... As for the Court of Justice, there was no interest in using it for intergovernmental conventions, except for civil cooperation measures.⁶⁸

TEU incorporated the arrangements of Trevi and some of the Schengen systems into the Community's framework which was now based on the three-pillar structure of the

⁶⁷ A. Crawford, ‘Introduction: governance and security’ in A. Crawford ed., *Crime and Insecurity. The Governance of Safety in Europe*, Cullompton, Devon: Willan Publishing, 2002, p. 2.

⁶⁸ S. Peers, 2000, *op.cit.* p.15.

Union.⁶⁹ Some aspects were included in the EC Treaty (visa policy) while others, under Art.VI, remained under the Third pillar called Justice and Home Affairs (JHA) where they continued to be addressed intergovernmentally.⁷⁰ The Third pillar encompassed cooperation in nine areas such as asylum policy, rules for crossing external borders and immigration policy, including the fight against illegal migration (Arts.K.1(1)-(3) TEU), judicial cooperation in civil and criminal matters (Arts.K.1(6)-(7) TEU), and police cooperation for the purposes of preventing and combating terrorism, drug trafficking and other serious forms of international crime (Arts.K.1(9) TEU). The Third Pillar was therefore one of the key areas in ‘creating an ever closer union among the peoples of Europe’, where ‘decisions are taken as closely as possible to the citizen’ in a single institutional framework ensuring ‘consistency and continuity’ of the Union’s policies.⁷¹

The pillar structure was a compromise between the member states which wished the area to be incorporated in the EU and those that viewed justice and home affairs as a matter of national sovereignty but were willing to allow an intergovernmental cooperation in the area with a limited role of the EU’s supranational institutions. These arrangements, however, did not improve cooperation but made it even more complicated. First, the Treaty (Art. E) recognised that the Union's institutions - EP, the Commission, the Council and the European Court of Justice had different powers in the three pillars, i.e. the Third pillar was almost exclusively dealt with by the Council (of JHA) and the others had very limited power in that respect.⁷² Secondly,

⁶⁹ Protocol integrating the Schengen *Acquis* into the Framework of the European Union, OJ C 340, 10.11.1997.

⁷⁰ The Maastricht Treaty introduced a three-pillar structure consisting of: the body of supranational arrangements under the treaties of the European Communities (European Coal and Steel Community; Euratom and the European Economic Community), and two other areas of intergovernmental cooperation: Common Foreign and Security Policy (Second pillar) and Justice and Home Affairs (Third pillar). Legislation within the First pillar is initiated by the European Commission and takes the form of Regulations and Directives. Regulations are binding in their entirety and directly applicable in all member states and the Directives are not directly applicable but are binding on the member states which have to adopt them in their national law within a certain period. The intergovernmental pillars’ instruments are co-operation and Joint Actions, Council Decisions and Framework Decisions, which are not directly applicable. Framework Decisions are legislative acts binding, as to the result to be achieved i.e. the member states have a choice of how to implement the measure as long as it achieves the intended result. U. Nelles, 2004, *op.cit.* and S. Peers, 2000, *op.cit.*

⁷¹ Article A, Treaty on European Union, *Official Journal C 191*, 29 July 1992. The establishment of these pillars and their policies was also part of the Treaty’s institution of a Union citizenship.

⁷² The problems with the intergovernmental framework are also closely connected with the decision-making machinery provided for by the Maastricht Treaty. Not only is it exclusively carried out by the Council of Ministers (of Home Affairs and Justice) but in order to adopt a decision it has to act

it continued some elements that critics associated with the 'democratic deficit' in this area, such as holding meetings in secret, disclosing selective information to the public, granting limited power to the national parliaments to alter already agreed decisions, etc. Thirdly, as the Council was granted the power to adopt joint positions or joint actions (the initiative for these is shared by the Commission and the member states), as well as to draw up international conventions and recommend them to member states for adoption, these did not have a binding effect on member states. Most of the measures, agreed by the Council after the Maastricht Treaty entered into force, were recommendations, resolutions and conclusions - all of which are not specifically envisaged under the Third pillar.

Despite their non-binding character however, many of these measures were incorporated in member states' policy and practice, though in a different manner. Schengen's incorporation into the Community law caused some difficulties because of its legal complexity and size (over 3000 pages), which even its signatory states found problematic. According to Statewatch 'when the 15 governments of the EU agreed to incorporate the Schengen *acquis* in the Amsterdam treaty in June 1997 few, if any, of them knew what was actually in the Schengen *acquis*'.⁷³ As a result of the incorporation of Schengen in the First Pillar of the EU, the meetings of the JHA Council were going to have at least 10 different levels of decision-making and could possibly have 12 or more as the Schengen Agreement had a mixed membership: 'the UK and Ireland will not participate in some decisions, Denmark will not participate in some decisions, the UK, Ireland and Denmark will take no part in others, and Norway and Iceland will have a say on Schengen issues - but as they are not EU members meetings with them will take place 'outside' EU structures'.⁷⁴

At its Maastricht stage, JHA was criticised for its intergovernmental framework, which was seen as an impediment for cooperation. This framework has been preferred by the member states because of the sensitivity of the subject. The UK for

unanimously (Article K.4(3) TEU). This arrangement led to delays and sluggishness in the decision-making progress because of disagreements among the member states on a number of issues.

⁷³ Statewatch, vol. 8, no. 3&4, May-Aug 1998 EU: Schengen *Acquis* [online] <http://www.statewatch.org> [online] accessed 21/03/2003. The inclusion of Schengen contributed to the Maastricht treaty's reinforcement of the link between immigration and crime.

⁷⁴ Statewatch, vol. 8, no. 5, Sep-Oct 1998 EU: Schengen *acquis* incorporation 'mess' [online] <http://www.statewatch.org> accessed 21/03/2003.

example advocated the intergovernmentability on the basis of the argument that policing and criminal law are a matter for national parliamentary control and scrutiny. However, even then the national parliaments are sometimes excluded to a certain extent from the discussions of JHA measures, and the European Parliament also has a limited role compared to its rights under the First Pillar – which again led to criticisms of lack of accountability and democratic deficit. This was exacerbated by the fact that JHA cooperation lacked openness and released limited information to the public; the meetings on every level were held in secret, the documents were all not published, and the archives were confidential (with an ambiguous rules for classifying them as such). Peers argued that:

This results partly from addressing most JHA issues outside the Community legal system... and partly from the operational nature of JHA cooperation. Member states want to exchange information on their citizens, not with their citizens. This reticence makes it harder to assess national implementation of JHA measures and increases the risk that human rights and civil liberties will be adversely affected by European developments.⁷⁵

The problem of jurisdictions and differences in law and law enforcement continued to plague the European anti-crime policies, and fostered a focus on the executive rather than judicial area which was more difficult to co-ordinate from a supranational level. Furthermore the internal political clashes of interest added to the complexity of this policy area. It was supported by pro-federalist Germany and pro-policing United Kingdom but for different political objectives. For the UK this was an alternative type of EU ‘deepening’, and for Germany it was a way of turning the EU into a more state-like structure where it could play centre stage. From the perspective of the European Commission – the main true supporter of the EU’s level of policy-making in the area of Justice and Home Affairs – these problems were the main impediment to the EU anti-crime policies. According to Antonio Saccone, Head of Europol’s Crime Analysis Unit: ‘A specific threat to the effectiveness and efficiency of law

⁷⁵ S. Peers, 2000, *op.cit.*, p. 3.

enforcement in the fight against transnational crime is rather related to administrative borders than to physical borders'.⁷⁶

Europol

Europol was a key initiative in the area of European policing (i.e. executive level) which nevertheless had its own controversies. The concept of a common policing body was included in the Treaty of the European Union Art. K on the establishment of a European Police Office (95/C 316/01) but two years after signing the Maastricht Treaty, the Convention on Europol was still in dispute. A core subject of disagreement were the operational powers of Europol demanded by Germany, i.e. Europol staff to be able to cross national borders and carry out investigations, as well as make arrests. This idea did not meet much support although Europol later on was allowed to do joint investigations with national police forces and demand arrests to be executed by the latter. The Convention was finally agreed and signed on 26 July 1995. It states that Europol's task is to combat 'terrorism, unlawful drug trafficking and other serious forms of international crime where there are factual indications that an organised criminal structure is involved and two or more member states are affected by the forms of crime in question' (Art. 2 of the Europol Convention). However, by establishing Europol, the TEU created the structure for a common information system similar to Interpol, but not new policies beyond those developed by Trevi.⁷⁷ Moreover, the TEU did not explicitly subsume the Schengen Information System which was supposed to continue operating alongside with Europol.

The usefulness of Europol was viewed in different ways by politicians and police officials. From the point of view of Europol's Director Dr. Willy Bruggeman, the organisation had a place in the complexity which he called a 'crowded police space':

European police cooperation can be viewed positively as such a space, with different countries and interest groups, being responsible for placing the emphasis on particular areas of cooperation. In fact, almost all the

⁷⁶ A. Saccone, 'Combating International Crime in an Enlarging European Union: What is the Role of Europol?', Intervention in the International Seminar for Experts in the series Great Debates, organised by the Cicero Foundation held in Paris 14 and 15 December 2006.

⁷⁷ A. Guyomarch, 1996, *op.cit.*

European countries are member countries of Interpol, the WCO and the United Nations. Some of them are Benelux and Schengen countries, and 15 are EU member states. With this in mind, Europe can be considered, in policing terms, as being made up of a series of concentric and overlapping circles. The 'map' shows overlapping institutional sources, territorial remits, functional specialisations and strategic emphasis.⁷⁸

However, the existence of so many jurisdictions and institutions created problems of coordination and hierarchies of authority in decision-making. The unsettled relationship between Europol and the other 'players' led to criticism and suspicions that Europol would never become a 'European police'. Europol was criticised for its relations with other non-European police agencies and international bodies, both in Europe and across the Atlantic, which 'are still inadequate given that criminal networks extend beyond the bound, not only of national law enforcement, but also of regional law-enforcement'.⁷⁹ Moreover, the establishment of Europol within the framework of the European Union and the legal arrangements for interaction, including control and supervision, with its other bodies was seen to create obstacles in its practical work.⁸⁰ Statewatch argued that there was an institutional rivalry between Europol and Interpol as the EC police network was interested in making full use of Interpol information, but had no intention of granting Interpol access to its own information. Interpol, in particular its European section, tried to exert strong pressure in order not to be excluded from the developing EC-network of police cooperation. But there was a lot of opposition to Interpol's desires. In the view of

⁷⁸ W. Bruggeman, 'EUROPOL - A European FBI In The Making?', Lecture in Cicero Foundation Great Debate seminar "Justice and Home Affairs - How to Implement the Amsterdam Treaty?", PARIS, 13 - 14 April 2000.

⁷⁹ R. Godson & P. Williams, 'Strengthening cooperation against transnational crime', *Survival*, Autumn 1998, vol. 40, no.3, pp.66-88.

⁸⁰ The role of the European Court of Justice in the Europol Convention was another subject of disagreement, and more precisely whether ECJ should be given a penal competence, i.e. sentencing powers, or not. The UK was the only member state to oppose its jurisdiction, and it actually opposed the involvement of any EU institutions - ECJ and the Court of Auditors in any of the intergovernmental conventions. On the other hand Germany and the Benelux countries shared the view that the creation of EU-wide police institutions requires legal recourse to the only court with the necessary powers and jurisdiction, the ECJ. Another issue of disagreement among the member states was the level of secrecy. For example Germany and France had different opinions over whether the meetings of the Joint Supervisory Body comprised of data protection commissioners should be held in secret or in public. Germany took the view that most if not all of its meetings should be in public as this would be the only way Europol could be seen to be accountable, France wanted them to be secret. *Statewatch*, vol. 8, no. 6, Nov-Dec 98 JHA Council, Dec 1998 [online] <http://www.statewatch.org> accessed 21/03/2003.

EC-decision-makers, Interpol exists, in these terms, to benefit Europol, but not vice versa. In the technical-administrative agreement on Europol it clearly says that Europol is prohibited from communicating with other international systems.⁸¹ As the EU states were members of both organisations this caused problems for the level of cooperation and data-sharing. Replacing the informal policing with formal structure was not yet a creation of supranational policing and 'it is unlikely that Europol, when it is finally operational in the years to come, will ever replace the informal and unaccountable groups, arrangements, exchange of liaison officers which has been built up over the last 20 years'.⁸² Despite these problems, Europol remained the most important EU institution in the fight against organised crime. Its Director described its advantage as: 'Europol is NOT an FBI and not intended to become a comparable instrument of the EU. All cooperation is based on intergovernmental cooperation and its role is limited to intelligence handling, support and co-ordination, even by supporting joint teams, and a new right of initiative.'⁸³ The Justice and Home Affairs Council agreed in June 2007 that the Europol Convention will be replaced by a Council Decision, to be finalised by 30 June 2008 at the latest, and that Europol would be funded from the Community budget as from 1 January 2010.

Before the Amsterdam Treaty the anti-crime activities coordinated by the EU were mainly organising and co-ordinating member states' initiatives in the area of crime and law enforcement in general.⁸⁴ Crime, serious or organised, remained an area which proved difficult for developing a common policy beyond a limited understanding of the phenomenon, despite the increasing attention from the media

⁸¹ However, the JHA Council (March 2000) authorised Europol to enter into negotiations with non-EU states and bodies on the two-way exchange of data. As drafted these countries are the EU applicants plus Canada, Iceland, Norway, Russia, Switzerland, Turkey and the USA. The decision adopted also included Bolivia, Columbia, Morocco, Peru. The Latin American countries were included under the US pressure because of their significance for US foreign and anti-drug policy. This authority of Europol was criticised because of the legal basis of such negotiations and especially for possible use of data received by countries where torture is used in investigations.

⁸² John Franks (1996) cited in *Statewatch*, 'What happened to Trevi?', February 1997 [online] <http://www.statewatch.org> accessed 21/03/2003. The police cooperation became more regular in the late 1980s. The first of series of bilateral exchanges of liaison officers between the UK and France took place in 1988. In 1992 the success of this experiment was formalised and with the posting of 'counter-terrorism liaison officers' being posted from the UK to France, Germany, Luxembourg, Belgium and the Netherlands (but strictly non-operational, providing information and advice). *Ibid.*

⁸³ W. Bruggeman, 2000, *op.cit.*

⁸⁴ For example a seminar on police and urban criminality held in Zaragoza, February 1996; a seminar on European Union measures to combat the drug problem in Dublin, November 1996; the European Union Conferences on Crime Prevention - Stockholm, May 1996 and Noordwijk, May 1997; and the seminar 'Partnerships in Reducing Crime' held in London, June 1998.

and policy-makers to what was seen as a European organised crime threat emerging in the new conditions in 1990s Europe. This helps to explain what has been described as ‘an early sense that the new security dimension was mere window-dressing for a political community centred around a free trade agenda.’⁸⁵ From the outset, the EU anti-organised crime policy was equally devoted to establishing the common denominator which allows a common policy, i.e. setting the limits of the concept of organised crime (specific forms of crime and definition of those) along with development of policy strategies and institutions within those limits. However, to-date there is no evaluation of Europol and the other anti-crime initiatives in terms of their contribution to reduction of crime in the EU members’ states.

4.6. Amsterdam’s Freedom, security and justice and focus on organised crime

The main criticism of JHA under the Maastricht provisions was the lack of transparency and the unaccountability of the Third Pillar, as its intergovernmental nature left most of the EU institutions out of control of its work.⁸⁶ The Treaty of Amsterdam, signed in 1997 (entered into force in 1999) was designed to correct some of these problems and ‘strengthen the security of the Union in all ways’ but also ‘to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms’.⁸⁷ The Treaty made a huge step towards incorporation of JHA into the EU framework, although a substantial part of it remained intergovernmental. Asylum and migration policy were re-located in the new Title IV of the EC Treaty under the title ‘Visas, Asylum, Immigration and other policies related to Free Movement of Persons’. Justice and home affairs cooperation was formally re-named as ‘Area of freedom, security and justice’. The previous Title VI remained in the revised TEU under the title ‘Provisions on Police and Judicial Cooperation in Criminal Matters’ with the objective ‘to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among member states in the fields of police and judicial cooperation in criminal matters’ (Art. 29, para 1 EU). This objective is to be achieved by ‘preventing crime...in particular terrorism, trafficking in persons and offences against

⁸⁵ N. Walker, Policing and the supranational. *Policing and Society*, 2002, vol. 12, no. 4, pp. 307-321.

⁸⁶ S. Peers, 2000, *op.cit.*, p. 37-38.

⁸⁷ The Treaty of Amsterdam [online] at <http://www.eurotreaties.com/amsterdamtreaty.pdf> accessed 8/10/2008.

children, illicit drug trafficking and illicit arms trafficking, corruption and fraud'. Since the Treaty of Amsterdam came into force on 1 May 1999 Justice and Home Affairs/Police and Judicial Cooperation (PCJ) has been the most dynamic policy domain in the EU.⁸⁸ In comparison to its relatively slow development before the 1990s JHA has been one of the 'fastest growth areas of EU activity in that period'.⁸⁹

However, there were a number of issues and disagreements among the member states related to the changes in the Amsterdam Treaty and the transfer of asylum and immigration to the First Pillar, which created the need to compromise but added further complexity. According to Peers, the dividing line between JHA cooperation and other types of European integration was still in place, and was even more important and complicated than before: 'there is a division between: the 'mainstream' of the EC Treaty, applying (usually) to all member states with a certain set of institutional rules applying to most issues; the new provisions of the EC Treaty addressing immigration, asylum and civil cooperation for some states; and the revised Third pillar provisions. Additionally, the Schengen *aquis* has been integrated into all three of these 'compartments', with a different set of rules applying'.⁹⁰ The attempt to democratise the Third pillar changed the role of the EU institutions in a continuing intergovernmental framework but added a complicated set of restrictions to the new roles, and especially a restriction to power of the Court to rule over the member states actions, and the role of the European Parliament. The Third Pillar remained largely an area of activity of the executive institutions, i.e. Member State governments and the Commission.⁹¹ Monar interprets these changes as retaining many of the intergovernmental features even for the issues which were transferred to the First Pillar (unanimity, non-exclusive right of initiative of the Commission, limited role for the European Parliament, etc.), and increase of *communitarisation* of the remaining Third Pillar as the increase of the roles of EU institutions in it has

⁸⁸ PJC replaced JHA as a pillar but the JHA Council continued to exist. The term JHA is used in the rest to refer to the fight against organised crime in the process of enlargement as it was used in the negotiations with the Eastern European countries.

⁸⁹ W. Rees, 'The External Face of Internal Security' in J. Peterson & H. Wallace, *International Relations and the European Union*, Oxford University Press, 2005, pp. 205-224, p.206.

⁹⁰ S. Peers, 2000, *op. cit.*, p. 40.

⁹¹ On the role of the Commission in the development of JHA, as well as the use of JHA by the Commission for establishing itself as a political actor in the European affairs, see E. Uçar, 'From the Sidelines to Center Stage: Sidekick No More? The European Commission in Justice and Home Affairs' European Integration online Papers (EIoP), 2001, vol. 5 [online] <http://eiop.or.at/eiop/texte/2001-005a.htm> accessed 20/10/1003.

made it less intergovernmental than the Second Pillar.⁹² However, as Apap pointed out the changes in JHA introduced by the Treaty of Amsterdam, which undermined the divide between First and Third pillar, enhanced their future use in foreign affairs thus affecting the Second Pillar as well: ‘The more JHA are integrated into the community method, the more they will be used in relations with third countries.’⁹³

The Treaty of Amsterdam reflected a new specific focus on the issue of organised crime. In the same year, 1997, the European Council created a High Level group to draw up an Action Plan to combat organised crime in the community, and the European Parliament adopted a resolution on organised crime.⁹⁴ In the next year the EU also completed a Pre-accession Pact on organised crime with the applicant countries from Eastern Europe and Cyprus.⁹⁵ Since around 1997 the issues of internal security, criminal justice and transnational organised crime have led to an unprecedented level of initiatives from individual member states and the EU institutions.

The Tampere meeting of European Council in 1999 had a specific focus on justice and home affairs, which was proclaimed as one of the most important EU policies because:

The European Union has already put in place a single market and an economic and monetary union. However, it was never intended to be simply an economic entity, since it is made up of 375 million Europeans who are first and foremost people and citizens. Thus, the Tampere summit is another step towards the development of the EU's impact on the daily life of European citizens. This is achieved by ensuring that everybody can live and move freely and safely throughout the European Union, while enjoying the same legal protection as the nationals of the

⁹² J. Monar, 1999, *op.cit.*

⁹³ J. Apap ed., *Reshaping Europe's Borders: Challenges for EU Internal and External Policy*, Report and Policy Recommendations from The Conference on New European Borders and Security Cooperation. Promoting Trust in an Enlarged European Union, CEPS, Brussels, 6-7 JULY 2001 [online] www.ciaonet.org accessed 20/03/2003.

⁹⁴ European Parliament resolution on organised crime, OJ C 371, 8.12.1997.

⁹⁵ Pre-Accession Pact on Organised Crime Between the Member States of The European Union and the Applicant Countries of Central and Eastern Europe and Cyprus (Text approved by the JHA Council on 28 May 1998) (98/C 220/01).

EU member state in which they happen to be... In other words, the European Union should not only be a single market and an economic and monetary union but also an 'area' of freedom, security and justice - an area where everyone can enjoy his or her freedoms, can live and work where he/she wishes in safety, and where disagreements and disputes can be sorted out fairly and justly.⁹⁶

The key policies for achieving safety and security for the EU citizens are the already established JHA objectives, i.e. 'common EU asylum and migration policy, a genuine European area of justice, a Union-wide fight against crime, a stronger external action (i.e. outside the EU).'⁹⁷ The Tampere European Council concluded that measures should be taken to combat organised crime at EU level. According to Monar, 'the proposals made by individual member governments during the preparation of the Tampere European Council of 1999 reach well over two hundred different legislative measures which could be adopted over the next five to ten years. If agreed these would leave untouched hardly any of the areas of competence for justice and home affairs (JHA) of the national ministries of the interior and of justice.'⁹⁸ Tampere also agreed new policing initiatives such as the introduction of joint investigative teams in cross-border areas for countering terrorism and people/drug trafficking, the establishment of a European police chiefs' operational task force, and Eurojust (a European team of national prosecutors),⁹⁹ and a European police college 'to make senior law enforcement officials aware of the European aspect of fighting crime'.¹⁰⁰

⁹⁶ European Commission's Directorate General Justice and Home Affairs (2002) Fact Sheet No3.1.Tampere: Kick-start to the EU's policy for justice and home affairs [online] http://ec.europa.eu/councils/bx20040617/tampere_09_2002_en.pdf accessed 01/09/2008

⁹⁷ *Ibid.*

⁹⁸ J. Monar, 1999, *op. cit.*

⁹⁹ Eurojust was another major initiative. It is a multinational European Prosecution system set up by the Council's Framework Decision (2000) with a view to Reinforcing the Fight against Serious Crime. It was meant to solve the problem of communication of national police authorities with Europol. According to Statewatch the discussions on the creation of Eurojust were hindered by its own disagreements: 'certain delegations wanted a 'light' Eurojust while others insisted on the Tampere conclusions, which spoke of 'unity'. The latter prevailed as the Eurojust unit will, 'where appropriate', 'help co-ordinate actions for investigations and prosecutions'. However, when acting within their own territories, the Eurojust officials will be subject to national law and procedure. When acting in another member states, the latter 'shall undertake to accept and recognise the prerogatives thus conferred'. Statewatch, 'Eurojust, an EU public prosecution system', vol. 10, no. 3/4 June-Aug 2000 [online] <http://www.statewatch.org> accessed 21/03/2003.

¹⁰⁰ European Commission's Directorate General Justice and Home Affairs (2002) *op.cit.*

In 1999, the Vienna Action Plan on Organised Crime required the Union to strengthen EU action against organised crime in response to the threat posed.¹⁰¹ The Plan envisaged an integrated approach from prevention to repression and prosecution of all criminal behaviour that should be the subject of minimum common rules relating to the constituent elements of criminal acts. The Treaty of Nice also confirmed the EU dedication to crime fighting. The first Eastern enlargement was also used as a way to promote the JHA. The applicant countries were required to adopt the JHA *acquis* as an important area of political convergence with the EU. The fight against organised crime became one of the ten priorities in the JHA section of the Hague Programme adopted in 2005. The programme envisaged the development of a common methodology for registering organised crime in the EU member states, and an EU crime statistics system which will constitute the core of 'European Criminal Intelligence Model'.¹⁰² The programme also planned yet another strategic strategy for fighting organised crime, and strengthening the cooperation amongst national law enforcement services 'in order to combat organised crime in a more effective way and the potential of Europol and Eurojust has to be fully exploited'.¹⁰³ Finally, the EU Reform Treaty of Lisbon signed in December 2007 abolished JHA. The cooperation in policing and criminal law was merged with Title IV of Part Three of the Treaty which dealt with immigration, asylum and civil law, in an attempt to make JHA cooperation more supranational.¹⁰⁴

4.7. The external dimension of Justice and Home Affairs

After the European Council's Tampere meeting in 1999 the EU policy on organised crime expanded its policy instruments, and especially the cooperation with non-EU countries. The external dimension of JHA was one of the four key objectives in Tampere (as discussed in the previous section) because:

¹⁰¹ Official Journal C 019, 23/01/1999, p.1-15.

¹⁰² The Hague Programme: Ten priorities for the next five years. A partnership for European renewal. Fighting organised crime: prevention, investigation and Cooperation. Organised crime. Developing a strategic concept [online]
http://ec.europa.eu/justice_home/news/information_dossiers/the_hague_priorities/doc/08_organised_crime_en.pdf accessed 10/10/2008.

¹⁰³ There has been mounting criticism of the limited use of Europol by national police services, and some turf wars between international and national policing (reference)

¹⁰⁴ For commentary on the JHA changes introduced by this treaty, see S. Peers, 'EU Reform Treaty: Analysis1: Version 3. JHA provisions', Statewatch analysis, 2007 [online]
<http://www.statewatch.org/news/2007/oct/eu-reform-treaty-jha-anal-1-ver-3.pdf> accessed 12/10/2008.

Much cross-border crime also crosses the external borders of the European Union and of neighboring third countries. The European Union and its law enforcement agencies must therefore not only play an active part in international bodies like the United Nations, the Council of Europe, OSCE, and OECD but also in co-operating with neighbouring countries, countries of origin (from which drugs, illegal immigrants, etc. come) and countries of transit (through which drugs, illegal immigrants and stolen goods are transported). The objective is to stop drugs, smuggled and stolen goods, and illegal immigrants entering the European Union, and to co-operate with neighbouring countries and countries of transit and origin to find and return cars, jewellery, objets d'art, etc. stolen within the EU and spirited out by organised crime for disposal on the international market, and to catch and punish the criminals responsible.¹⁰⁵

In 2000 at its Feira meeting, the European Council agreed a programme for developing this policy as an 'external dimension of JHA'. In the next five years the external dimension of JHA grew in importance for both the internal security of the EU, and for its external or foreign relations. By adopting this external dimension, the Union finally legitimised its dual internal-external security governance in Europe, which was now seen as a collective security space where the EU has a regional and global security mission, and this mission was to be fulfilled first amongst its neighbours. According to the Commission: 'Freedom, security and justice issues lie at the heart of maintaining international stability and security both outside and inside the European Union' and 'the projection of the values underpinning the area of freedom, security and justice is essential in order to safeguard the internal security of the EU. Menaces such as terrorism, organised crime and drug trafficking also originate outside the EU. It is thus crucial that the EU develop a strategy to engage with third countries worldwide'.¹⁰⁶ In this way the external dimension fulfils two roles: it serves internal security purposes, and it presents the EU as a structure which enhances third countries' security, therefore global security - an idea developed in

¹⁰⁵ European Commission's Directorate General Justice and Home Affairs, 2002, *op.cit.*

¹⁰⁶ Communication from the Commission: A strategy on the external dimension of the area of freedom, security and justice COM/2005/0491 [online] http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=COMfinal&an_doc=2005&nu_doc=491 accessed 6/10/2008.

the EU's Security Strategy adopted in 2003.¹⁰⁷ The strategy cited organised crime as one of the global challenges, and threat to European security. According to the document, 'this internal threat to our security has an important external dimension: cross-border trafficking in drugs, women, illegal migrants and weapons accounts for a large part of the activities of criminal gangs. It can have links with terrorism. Such criminal activities are often associated with weak or failing states... Taking these different elements together – terrorism committed to maximum violence, the availability of weapons of mass destruction, organised crime, the weakening of the state system and the privatisation of force – we could be confronted with a very radical threat indeed.'¹⁰⁸

The external dimension, addresses the external challenges amongst which 'the ever-growing sophistication in organised crime, including money laundering and other financial crimes, and cross-border trafficking in drugs, persons and arms can only be countered through improved law enforcement and judicial cooperation, both within the EU and externally, and through support for capacity-building in third countries.'¹⁰⁹ By following this policy the EU is expected to 'assist third countries in responding to growing challenges and thus to fulfil their expectations.' According to EU's web site on '*Justice, freedom and security - an important element in the EU's relations with third countries*', the instruments for implementing this cooperation with non-EU states include a wide range of external activities, with a growing number of third countries and regions. This was an integrated approach as the external dimension of JHA fostered anti-crime policies in the rest of the Union's areas, including the Second Pillar, Common Foreign and Security Policy. Finally, the process of enlargement and pre-accession negotiations and assistance became one of the key mechanisms and tools for delivering the goals in the JHA area in the process of enlargement which 'is an effective way to align with EU standards in justice and home affairs in candidate countries and those with a European perspective, both

¹⁰⁷ A Secure Europe in a Better World. European Security Strategy. Brussels, 12 December 2003, *op.cit.*

¹⁰⁸ *Ibid.*

¹⁰⁹ Communication from the Commission: A strategy on the external dimension of the area of freedom, *op.cit.*

through the adoption and implementation of the *acquis* and through improvements in operational contacts and cooperation.’¹¹⁰

The external dimension of JHA/crime-fighting is an area which has caused less disagreement among the EU member states as it did not concern sovereignty as much as the mainstream policy in this area. It was accepted by the non-EU states where the EU’s foreign aid was increasingly linked to the concept of good governance and action against crime and corruption, and the recipient state had no choice but to comply. In the accession states the fight against crime was linked to the policy of reform and transition, and a condition for EU membership, which made the policy appealing to the voters. In academic circles, however, the external dimension has been criticised for being contrary to its proclaimed goals both as a foreign policy objective and as a security strategy. According to Smith, for example, ‘[The EU] has tried to shape its milieu, notably by pressing third countries to adopt its standards and practices in this field, but this milieu goal is a way of achieving what is really a possession goal’.¹¹¹ Furthermore, the external dimension policies have been criticised even by pro-EU experts for exporting democratic deficit. Although the arrangements under the Third Pillar were criticised for their lack of transparency, as Fijnaut points out the intergovernmental framework provided certain means for democratic control through the national parliaments.¹¹² At the same time, the external dimension of the anti-crime policy has been very active since the late 1990s and it has exported EU-designed formulas and it has largely ignored the need of a negotiated consensus between various domestic actors and interests, characteristic of democratic internal policy-making which ultimately has security consequences.

4.8. Conclusion

Justice and Home Affairs, and the fight against organised crime, are relatively new areas of cooperation for the European Union’s nearly 60 years of existence. Attempts to develop international cooperation on issues covered by JHA date back to the

¹¹⁰ Council of the European Union, A Strategy for the External Dimension of JHA : Global Freedom, Security and Justice, Brussels, 14366/3/05, Rev 3, 30 November 2005 [online]
<http://register.consilium.europa.eu/pdf/en/05/st14/st14366-re03.en05.pdf> accessed 6/10/2006.

¹¹¹ K. Smith, *European Union Foreign Policy in a Changing World*, Cambridge: Polity Press, 2007, p.205.

¹¹² C. Fijnaut, ‘Introduction to the special issue on police accountability in Europe’, *Policing and Society*, 2002, vol. 12, no. 4, pp. 243-248.

beginning of the 20th century but they have never run counter to the principle of national sovereignty and have not had the ambition to establish supranational institutions, and hence have always remained inter-governmental and very limited. Any attempt to encourage states to co-operate despite contrary national interests as is the case with Interpol, has proved unsuccessful and has imposed more restrictions on any such project. The initiatives before 1990s – the Trevi group, various *ad hoc* ministerial meetings, Schengen and ideas of European policing – were all motivated by internal security concerns, and there was no particular focus on organised crime until the mid-1980s.

However, in the 1990s the issue of international crime became a hot topic in international affairs, and attracted the attention of the media, policy-makers and the general public as a new security threat in the post-Cold war conditions in Europe. The creation of Justice and Home Affairs by the Maastricht Treaty placed organised crime amongst the concerns of the Union and created a semi-independent agency, Europol, to facilitate the fight against organised crime conducted by the national authorities of the EU member states. However, since its formulation as an EU policy area in early 1990s, JHA has been constantly expanding its structures, initiatives, measures, and it has included a growing number of actors in and outside the Union. These developments have led to claims that JHA is a strong area of European governance, which is very important for securing the everyday life of EU citizens by protecting them from the new transnational risks such as organised crime, which became a priority in the late 1990s and after the Amsterdam Treaty and Tampere. At that stage, the framework of cooperation remained inter-governmental but the legislative changes introduced by Amsterdam, and the increasing political focus on security and international crime at the time led to an unprecedented rise in initiatives and measures within the Third Pillar.

The EU security strategy of 2003 proclaimed an exclusive role for the EU in global security and the tackling of global challenges, including organised crime. In this way the issue of organised crime, which was barely known before the 1980s, and not even acknowledged as a problem for most of the EU states until the mid-1990s, became one of the key issues of foreign policy associated with issues as wide as good governance, democracy, rule of law, economic development, weak states, etc. The

EU approach towards its periphery has been increasingly guided by this new understanding of the *security continuum*, i.e. merging internal and external security policy as the best way to address the new transnational challenges. The anti-crime policy was initially focused on the actions of the EU member states but problems of cooperation have pushed the anti-crime agenda externally where more results could be yielded. This policy is promoted as a way of creating stability on the periphery in order to increase the security of the member states. It is also seen as a positive for the recipient countries that would benefit from the export of stability.

On the other hand, as this chapter has also shown, Justice and Home affairs and anti-crime policy developed on an EU-level has created a number of problems. The lack of clarity on issues such as the nature and level of organised crime in the EU, limitations imposed by national sovereignty, the complex nature of JHA between supranational and intergovernmental forms of cooperation with limited role of the EU's institutions and the persistent problem of institutional rivalry, have all prevented the development of a common policy beyond the lowest possible denominators. JHA remained limited to issues such as immigration, asylum, information exchange through Europol, and a narrow understanding of organised crime as mainly drug and people trafficking. From this perspective, the development of the external dimension of JHA/crime fighting can be understood as an area which provided opportunities to develop a stumbling policy, and promote the EU as a security actor: both for its member states, and the world outside. The process of EU enlargement was a particularly fruitful area of testing both the external dimension and the ability of the Union to ensure its internal security.

Chapter 5. Organised Crime and EU Enlargement

5.1. Introduction

This chapter discusses evidence from a closer examination of how fighting organised crime became bound up in the process of EU enlargement to Eastern Europe. It builds on the argument developed in previous chapters, namely that the EU engaged in the escalating process of politicisation of crime and non-military security, resulting in the development of an external dimension of the Justice and Home Affairs (JHA) pillar and working with non-EU states on fighting organised crime beyond state and EU borders, in a new ‘collective’ soft-security fashion. The focus of the following discussion is the specific nature of this external activity and the way the anti-crime agenda has been rationalised in the process into a broader member-state building project whereby crime fighting is prioritised along with issues of democracy and rule of law in the countries in ‘transition’.

This external anti-crime policy of the EU displays two distinctive features. On one hand it is linked to internal security concerns and the fear of external sources of crime, particularly crime from the former communist states spilling-over into the European Union. On the other hand it enhances the international role of the EU as a key actor in the new global security discourse, and a key mechanism for the diffusion of Western norms in the Eastern European states’ democratisation. This was deemed necessary as the rising crime levels in these states, their growing internal inequality and social problems, as well as the difficulties that they were experiencing in their internal reform policies signified a danger of weakening state power and its monopoly on violence, and growth of internal conflicts and new post-communist Mafias.¹ Therefore ensuring the ability of state institutions to fight organised crime was seen by the EU as part of establishing true democracy, a competitive market economy and security. This was translated into a policy of strengthening of the applicant state’s justice and law enforcement institutions as the way towards

¹ These fears were strongest in the case of Russia where the state is seen as directly linked to oligarchs and mafia structures. See for example S. Handelman, *Comrade Criminal. Russia’s New Mafiya*, Yale University Press: New Haven and London, 1995.

reducing crime and preparing the applicant for joining the EU's area of 'freedom, security and justice'. This policy was carried out by using a variety of instruments such as pacts and cooperation agreements, or foreign aid for law enforcement purposes, along with some more rigid methods (used more rigorously in the Balkans) such as non-negotiable transfer of the JHA *acquis*, using crime fighting in the enlargement conditionality, direct institution building through knowledge and technology transfer, and pre- and post- enlargement monitoring of policy performance.

This chapter first outlines the issue of post-communist crime and the use of foreign policy instruments by the EU for building a trans-European consensus on fighting organised crime, which focused on Eastern Europe and especially the Balkans. It then develops a closer empirical enquiry into the institution-building policy carried out through the EU's financial aid programme PHARE – originally set up for Poland and Hungary's economic reform but later expanded to more applicants and policy areas, including crime-fighting. The discussion of the programme covers the period from 1997 to 2002, when the proportion of JHA projects within the PHARE programme increased significantly.² The data used for the analysis is extracted from so-called *project fiches* which were developed by the applicant countries to attract funding within the terms of reference of PHARE. This meant that projects' goals, activities and budgets, contained in the fiches aimed at satisfying the programme's and EU objectives. Furthermore, the projects content reveals a number of micro-policy issues, which are analysed and used for broader conclusions about the nature of the EU's external policy on organised crime, which appears unique in a wide range of bilateral and multilateral anti-crime policies.

5.2. The EU's anti-crime policy and the problem of Eastern European crime

As the previous chapters discussed the emergence of the external dimension of the EU's *internal* crime fighting policy was rationalised by the identification of new transnational risks to security and a role for the EU in fighting these risks under its Justice and Home Affairs pillar. This new and holistic approach to security seemed

² K. Gachevska, 'Exporting Anti-crime Policies: EU PHARE Projects on Fighting Organised Crime' in *European Studies Conference Proceedings*, University of Rouse Press, 2005, pp.32-37.

to be merging the previously separate areas of 'internal' and 'external' security and leading to a spill-over of the anti-crime agenda into to the EU's foreign policy.³ In a justification of the external dimension, for example, Franco Frattini, Vice-President of the European Commission explained that the 'external impacts the internal': drugs usually come from outside, organised crime gangs inside are linked to outside by cultural and geographic links. Therefore, according to Frattini:

To tackle organised crime all areas of policy must come together. We cannot have artificial borders between different policies nor between internal and external policy. Those who threaten the EU would be the only people to benefit. Rather we must see justice, freedom and security as interlinked to the EU's external action.⁴

This new role of the EU is promoted in its first official security strategy documents adopted in 2003: 'As a union of 25 states with over 450 million people producing a quarter of the world's Gross National Product (GNP), the European Union is, like it or not, a global actor; it should be ready to share in the responsibility for global security.'⁵ As the security agenda was now dictated by new norms transcending the military sphere and state sovereignty, the mission of the EU's foreign policy was rationalised not vis-à-vis other actors (states) but by the establishment of these new principles abroad as a platform of collective action against the new transnational

³ This should not be mistaken with direct transfer of JHA issues to the EU's Common Foreign and Security Policy (also known as the Second Pillar which included the European Security and Defence Policy (ESDP), which is another complex and semi-developed policy area of similar intergovernmental cooperation. A merger between these two areas has not yet taken place and some authors argue that the claims of uniting the 'internal' with the 'external' has remained more rhetorical than realised in practice, and that states in reality continue to separate internal and external security policies. See for example S. Dalferth & M. Weiss, 'Security *Re*-Divided: ESDP and JHA *Are* Distinct' Paper presented at the 49th Annual ISA Convention 'Bridging Multiple Divides', San Francisco/USA: 26-29 March 2008. The current chapter is mainly concerned with the external dimension of JHA which uses foreign policy instruments but is ultimately internal as the states which the chapter examines prepared to be part of the EU and Schengen. However, the development of this policy should be analysed from an international relations perspective as the EU is comprised of member states, and JHA remains an intergovernmental policy area.

⁴ How the Justice, Freedom and Security policies influence EU's external action - Address by Franco Frattini, Vice-President of the European Commission, July 30th 2007 [online] http://www.mfa.gov.hu/kum/en/bal/foreign_policy/Missions_heads_Conference_2007/2007/How_the_Justice_Freedom_and_Security_policies_influence_EU_s_external_action_Address_by_Franco_Frattini.htm accessed 20/02/2008.

⁵ A Secure Europe in a Better World. European Security Strategy. Brussels, 12 December 2003 [online] <http://ue.eu.int/uedocs/cmsUpload/78367.pdf> accessed 20/12/2008.

risks for all.⁶ This strategy is seen as beneficial to the EU and its citizens, as well as to the wider world of states with different capacities for providing soft security for their citizens, especially the institutionally weak post-communist states in the EU's immediate neighbourhood.

All of the (former communist) countries from Central and Eastern Europe had a marked increase of the level of crime in the first few years of the 1990s when they all faced economic problems and loss of state legitimacy as communism collapsed. In the first years of transition, the levels of crime rose by an average of about 190% in the countries in Eastern Europe. In some cases the level of registered crime rocketed by nearly or more than 300% for Bulgaria, Romania and the Czech Republic.⁷ These figures provoked a fear of *post-communist* crime initially amongst the local population, and then in Western Europe through media coverage and reports of Western observers and embassies, as well as links made between crime and the large wave of immigration from the region to Western Europe and the USA.⁸ Rising crime was seen as generated by the dramatic social, political and economic changes that Eastern Europe faced in late-1980s and the early 1990s, and particularly the combination of *crisis* and *reform*.⁹ In the first years of transition there was a sharp rise of unemployment and poverty, along with reform policies aimed at restricting the role of the state and particularly its spending, which were demanded by foreign financial institutions such as the IMF. Both factors led to widening the milieu of the

⁶ Some authors see the reverse effect of this process and argue that the endorsement of issues such as crime has also been used for foreign policy purposes and more specifically for the promotion of the EU as a regional and global actor. See for example, F. Longo, 'The export of the fight against organized crime policy model and the EU's international actorness' in M. Knodt & S. Princen eds., *Understanding the European Union's External Relations*, Routledge, 2003, pp. 158-172, and K. Smith, *European Union Foreign Policy in a Changing World*, Cambridge: Polity Press, 2007.

⁷ N. Genov, 'Managing Transformations in Eastern Europe' in *Regional and Global Development*, UNESCO MOST Paris, Sofia, 1999, p.95. Those three countries received most attention from the Western media and officials and were seen as hubs of international organised crime and corruption.

⁸ There were mounting publications in Western, mainly American press about the rise of the international Russian/Eastern European Mafia after the end of communism. Some examples include R. Selwyn, 'New Groups of Russian Gangs Gains Foothold in Brooklyn', *The New York Times*, August 23, 1994, p.1; The Times, 'New Comrades of Crime', *The Times*, (Trenton, NJ) August 14, 1994, or J. Perlez, 'Sofia Journal: Rogue 'Wrestlers' Have an Armlock on Bulgaria', *New York Times*, 12 January 1995.

⁹ According to Łoś the fear of crime was also spread by the new commercial media, which was dependent on marketing 'bad news' as opposed to communist state-controlled media whose purpose was 'good news' propaganda. See for example M. Łoś, 'Post-communist fear of crime and the commercialization of security', *Theoretical Criminology*, 2002, vol. 6, no. 2, pp. 165-188.

economically deprived who engaged in crime as one of their survival strategies.¹⁰ On the other hand, the transition caused a rise of private criminality (as opposed to state crime) in conditions of increased private property and expansion of the consumer market. This led to a rise in property crime which caused moral panic along with the new social and cultural shock of the explicit private pursuit of money and profit.¹¹

But even with the considerable rise, the problem of crime in the post-communist states in the first decade of transition was not quantitatively higher than the crime in the West. However, it began to be rationalised as qualitatively different and linked to the ill-functioning state above all other criminological factors. This shift of the focus from the social to institutional conditions of crime gained increasing popularity, mainly because it seemed to explain not only the rise of crime linked to inequality but also the emergence of private security organisations and other forms of proto-organised crime in some post-communist states.¹² Although academic research points at different origins and types of organised crime in Eastern Europe, which is not always linked to weakening state power, the policies adopted to deal with post-communist crime have focused on strengthening the state criminal justice institutions and building crime-fighting capacity.¹³

¹⁰ This was particularly common in the case of the significant Roma minorities in Eastern Europe and the Balkans.

¹¹ N. Genov, 1999, *op.cit.* and B Gruszczynska, 'Crime in Central and Eastern European Countries in the Enlarged Europe', *European Journal on Criminal Policy and Research*, 2004, vol. 10, pp.123-136. However, the *actual* level of crime in Eastern Europe cannot be determined with precision. The crime figures for Eastern Europe suffer from similar methodological deficiencies as crime measured in the West, and these states in transition have undergone reforms of the criminal justice systems and made numerous changes to the methods of crime recording. There has also been a rise in reporting crime to the police, as well as numerous other issues which makes a precise comparison of crime before and after the fall of communism difficult. In the case of Bulgaria, for example, crime figures had begun to rise in the 1980s, before the end of communism.

¹² See for example L. Shelley, 'Crime and the Collapse of the Soviet State' in J. Millar & S. Wolchik eds. *Social Legacy of Communism*, Washington, D.C.: Woodrow Wilson Center Press, 1994, pp.130-148; L. Shelley, 'Post-Soviet Organized Crime: A New Form of Authoritarianism' in P. Williams ed., *Russian Organized Crime: The New Threat?*, London: Frank Cass Publishing, 1997, pp. 122-138.

¹³ Earlier accounts of organised crime in Eastern Europe mention the region as used by international organised crime networks, or a result of the collapse of communism and the subsequent chaos. In 1994, for example Phil Williams who was one of the first academics to publish on Eastern European organised crime, argued that since the fall of the Iron Curtain Eastern Europe had started being used by Columbian cartels as a transit point for the illegal drug trade, or heroin trafficking from Southeast Asia and Turkey. P. Williams, 'Transnational Criminal Organisations and International Security', *Survival*, 1994, vol. 36, no. 1, pp. 96-113. Eastern Europe as a 'victim' of international crime is a view shared at the time by other academics such as the Italian scholar Ernesto Savona. See E. U. Savona, S. Adamoli, P. Zoffi & M. De Feo, *Organised Crime Across the Borders*, Heuni, Helsinki, 1995; E.U. Savona & S. Adamoli, 'The impact of Organised Crime in central and eastern Europe', paper presented at the Council of Europe 'Multilateral Seminar on Organised Crime', Minsk, Belarus, 16-18 September 1996. Some authors trace the emergence of organised crime networks *under*

Therefore the issue of crime and organised crime became intertwined with the general agenda of transition to democracy, and this agenda was perceived to need to establish transparent, accountable and strong state institutions as guarantors of democracy against chaos, crime and corruption.¹⁴ Institution building became the main priority in the pre-accession policy, shared by the EU and the applicant countries. It was also seen as a tangible and measurable goal which could justify a transfer of funds under various assistance and aid programmes of the EU and other donors, concerned with the effect of crime and corruption on the quality of governance and the economy of the states in transition and especially in the Balkan states, which were perceived as having a serious crime problem (of a Russian magnitude).¹⁵ This view was summarised in the EU Security Strategy: ‘restoring good government to the Balkans, fostering democracy and enabling the authorities there to tackle organised crime is one of the most effective ways of dealing with organised crime within the EU.’¹⁶ Furthermore, despite the fact that the Balkans were seen as different and alien, crime seemed to be a basis of common action, as the EU CFSP’s High Representative Javier Solana stated:

communism which had very strong state institutions and still developed the so-called *vo- v-zakone* (thief in law, or professional criminal) in the Soviet Union’s underworld. S. Handelman, *op.cit.* Finally some researches see the Western European conception of Eastern European organised crime as a media hype and exaggerated internal and external threat. See P. Rawlinson, ‘Mafia, Media and Myth: Representations of Russian Organized Crime’, *The Howard Journal*, 1998, vol. 37, no. 4, pp. 346-358; A. Kiva, ‘Criminal Revolution: Fiction or Reality’, *Social Sciences*, 2000, vol. 31, no. 1. [online] www.ciaonet.org/olj/socsci/socsci_00kia01.html accessed 3/07/2004 and J. Finckenauer & E. Waring, (no date) ‘Challenging the Russian Mafia Mystique’ [online] www.ncjrs.gov/pdffiles1/jr000247b.pdf accessed 11/10/2006. For an overall review of post-communist crime which takes into consideration all important issues, see R. Lotspeich, ‘Crime in the Transition Economies’, *Europe-Asia Studies*, January 1995, vol. 47, no. 4, pp. 555-589.

¹⁴ This is also linked to the concept of ‘state capture’ which became popular in the late 1990s and became a powerful critique of Eastern European transition, elite power and oligarchs. The term itself is linked to a World Bank endorsed publication on corruption in states in transition. See J. Hellman, G. Jones & D. Kaufmann ‘*Seize the State, Seize the Day. State Capture, Corruption and Influence in Transition*’, World Bank Policy Research Working Paper, 2000, no. 2444.

¹⁵ However, a very extensive survey of crime in the Balkans (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the former Yugoslav Republic of Macedonia, Moldova, Montenegro, Romania, and Serbia) performed by the UN’s Office on Drugs and Crime confirms that the perceptions of the region as a crime-ridden area are in fact largely exaggerated and criminal and other statistics show that the region does not have higher levels of crime compared to Western Europe. The report does make the point that the Balkan states may not have higher levels of crime (as far as statistical data can reveal) but they have a specific problem with organised crime, which it finds difficulty in qualifying and quantifying. The main problem of the report is that the existence of illegal economic enterprises does not translate into a large amount of criminals in the area, as well as Western Europe. The report confirms the problems of theorising crime as a monolithic structure as it also shows that police actions on the ground have failed to round up many criminals.

UN Office on Drugs and Crime (2008) *Crime and its impact on the Balkans and affected countries*. At http://www.rcc.int/download.php?tip=docs&doc=Balkan_study.pdf&doc_url=88ac72aabc4af267910da4f02ca3f7c0 accessed 16/01/09.

¹⁶ A Secure Europe in a Better World, *op.cit.*

Fighting crime in the Balkans should no longer be seen as something different from fighting crime at home. The criminal networks are the same. The crimes are the same. The best methods to fight them are the same. Close and effective cooperation. And if we don't manage to take the fight across borders, to their home bases, into the Balkans, we have little hope of winning in the long run. What we need therefore is to develop means for the real professionals to co-operate. They need to exchange information, push investigations all the way, extradite suspects, and bring them to justice. They need to be able to rely on the full co-operation and readiness of police and judicial structures in all countries concerned. And they need to feel that they have our full support. No criminal should be protected; no blind eye should be turned on crime.¹⁷

This focus on the Balkans needs to be interpreted as part of a complex and not particularly clear cross-insemination of JHA and foreign policy agendas.¹⁸ The external dimension of JHA, which was discussed in the previous chapter, is mainly concerned with extending the fight against organised crime abroad but the policies applied in relations with third states are far from standardized. According to the Commission's website dedicated to the Area of Freedom, Security and Justice, the EU differentiates between third countries, groups of countries and regions, and the 'depth of the relations varies' according to the *geographic* and *thematic* priorities. The *geographic* priorities dictate that the EU exports the JHA agenda to its immediate neighbours, i.e. the accession countries in Central and Eastern Europe plus Bulgaria and Romania and the Baltic states (by providing help in pre- and post-enlargement adoption of JHA *acquis*), the Western Balkans (engagement with crime fighting in the post-war state-building policies), Russia (implementing a Common Space on Freedom, Security and Justice) and the Mediterranean region and Ukraine (implementing the European Neighbourhood Policy Action Plan) are the immediate addressees of the external policy, followed by the Central Asian countries

¹⁷ Intervention by Javier Solana, EU High Representative for the Common Foreign and Security Policy. London Conference on Organised Crime in South Eastern Europe. London, 25 November, 2002 [online] http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/EN/discours/73343.pdf accessed 16/11/2008.

¹⁸ Added to that is the fact that the Balkan region has played a special role in the development of the EU's common foreign policy via the Union involvement in the disintegration of Yugoslavia in the 1990s.

(Partnership and Cooperation Agreements), and to some extent China and India. The United States and Canada have a partnership status.¹⁹ The *thematic* priorities of the policy are the promotion of ‘rule of law, good governance and institution-building’,²⁰ which is achieved through cooperation on issues, which affect mainly the EU: ‘migration and asylum; border management and effective control of borders; law enforcement cooperation on combating terrorism as well as the fight against organised crime, including trafficking in human beings, money laundering and the fight against corruption; judicial cooperation in civil and criminal matters; assisting judiciary and judicial reform in third countries.’²¹ To achieve the goal of cooperation the EU has to resort to ‘soft power’ instruments to make third countries cooperate in the fight against crime. These instruments include: legal agreements with a justice, freedom and security chapter, common spaces, expert and ministerial meetings, sub-committees, declarations, action plans and agendas, monitoring and evaluation, and not least assistance programmes.²² The assistance programmes consist of financial, technical and expert assistance and have been used in the post-communist countries undergoing Western devised reform.²³

¹⁹ *Ibid.*

²⁰ The issue of ‘good governance’ is one of UK and US foreign policy priorities and a condition for foreign aid (including demands for reforms of criminal justice systems due to human rights concerns) required by agencies such as the UK’s Foreign and Commonwealth Office and the Department for International Development (like the ‘Good Government’ initiative of the Department for International Development). A. Beck, M. Rowe & A. Willis, ‘Practice & Pitfalls in Providing International Policing Assistance’, *Police Command Studies International*, 2003 [online] at <http://www.policestudies.com/papers/pitfalls.pdf> accessed 16/11/2008. In the 1990s the US government also increased foreign aid for police reform and rule of law policies in transition or post-conflict states. They spent almost \$1 billion on rule-of-law programs in 184 countries between 1994 and 1998 (half of it was spent in 15 countries, most of them Latin American). D. Bayley, *Democratizing the Police Abroad: What To Do and How To Do It*, Washington: National Institute of Justice, Office of Justice Programs [online] <http://www.ncjrs.gov/pdffiles1/nij/188742.pdf>; accessed 16/11/2008.

²¹ European Commission (no date) ‘EUROPA: Justice, freedom and security - an important element in the EU’s relations with third countries’ [online] http://ec.europa.eu/justice_home/fsj/external/fsj_external_intro_en.htm accessed 15/10/2008.

²² *Ibid.*

²³ The use of ‘stick and carrot’ approach of financial assistance is not limited to the candidate countries but used with those that are not yet concerned by the accession process. In a report adopted by the Committee on Foreign Affairs and Human Rights of the European Parliament on the Stabilisation and Association Process in the Western Balkans in 2002, it is ‘recommended that the European Union refrain from passing to a further stage of the [process] and/or consider the possibility of suspending partially or totally the financial assistance to any of the five countries concerned, where they do not comply with... four basic political conditions.’ One of these conditions is ‘an active policy against organised crime and corruption, including the setting up of adequate intelligence, investigation and prosecution structures and the reform of the judicial system.’ Introductory speech by Doris Pack, member of the European Parliament and Chairman of the Parliamentary Delegation for Relations with SEE, at Working Session on ‘Fighting Corruption and Organised Crime’, Third Parliamentary Conference *Enhancing Security and Political Stability: Progress on the Stability Pact*, Tirana, 14-16 October 2002, Stability Pact Parliamentary Troika.

Finally, the most efficient policy instrument that the EU has for ensuring stability in its neighbourhood is enlargement. This instrument appears to be most controversial because most of the countries which have applied for membership in the 1990s were also perceived as sources of criminality and overall threat to the stability of the EU.

The development of the EU's Justice and Home Affairs and Schengen free travel area made enlargement itself come to be perceived as a security threat because by 'taking countries which do not yet have efficient border control and judicial systems the EU risks internalising security problems.'²⁴ Therefore, as '[the] Eastern Enlargement is not only a promise of economic prosperity, better life standards and political stability, it also represents potential threats to the security dimension of the EU. We are referring to problems, which are already known to the Union, such as organized crime (drugs, weapons and human trafficking, money laundering), illegal immigration and terrorism, but whose scale might become even greater with the shifting of the Union's border eastward and the entrance of the new member states into the Schengen area.'²⁵ From this perspective enlargement and the fight against organised crime became mutually re-enforcing but also contradicting policies.

5.3. JHA and fighting organised crime as pre-accession requirements

As we have seen, the initiatives in the field of organised crime in relation to enlargement were relatively limited before 1998. The underdeveloped framework of the JHA *acquis* did not provide enough basis for such initiatives before the JHA's development was speeded up by the Amsterdam Treaty. On the other hand, during the first years of the Eastern European transition, the relations between Eastern Europe and the EU were more distant and the Western European states were more cautious in their dealings with the newly established democracies. The initial contact was done through the Association Agreements which the EU signed with some of the former communist states, and the issues which later fell into the Justice and Home

²⁴ L. Friis, *Eastern Enlargement, Schengen, JHA and all that... Tracing the EU's 'Internal Security Policy' towards Central and Eastern Europe*, Working Papers. Columbia International Affairs (no date) [online] www.ciaonet.org/wps/fr102/fr102.html accessed 29/01/2003.

²⁵ H. Carrapiço, 'The European Union's Eastern Enlargement: a Guarantee of Security or a Security Trap?' *Fédéralisme Régionalisme*, Vol. 4, 2003-2004 - Régions et sécurité [online] <http://popups.ulg.ac.be/federalisme/document.php?id=220> accessed 22/04/09.

Affairs area were not included in these agreements.²⁶ The agreements were not conceived as a route to enlargement at that stage when the priority of the EU was still the discussion on ‘deepening’ European integration and dealing with German reunification.²⁷ The decision to open up membership to Eastern European members was taken at the Copenhagen meeting in 1993 which coined essential requirements for membership, and defined the areas of ‘a structured relationship with the institutions of the European Union...[as] Community areas, especially with a trans-European dimension, including energy, environment, transport, science and technology, etc.; Common foreign and security policy; Home and judicial affairs.’²⁸ There was not much cooperation on JHA issues between the EU and its associates in the period between 1993 (Copenhagen) and 1997 (decision to open negotiations), and commentators even describe that phase as an EU ‘monologue’ describing the EU rhetoric and Eastern European reluctance to engage in deeper JHA policies.²⁹

After 1997 when the Amsterdam Treaty prioritised the fight against organised crime the pressure from the EU on Eastern European candidates increased under a more multi-institutional approach. The applicant countries, and particularly their elites which were increasingly legitimising power through subscribing to Western norms, accepted the international fight against organised crime issue as a policy area of mutual interest. Anti-crime and corruption policies were strong political tools in countries with limited political options, and they also attracted approval, funding and ultimately EU membership.³⁰ This led to intensification of the activities in the area by both sides. This was sealed by the signing of a Pre-Accession Pact on organised crime between the member states of the European Union and the Applicant Countries of Central and Eastern Europe and Cyprus, approved by the JHA Council in May

²⁶ L. Friis, no date, *op.cit.* Friis also notes that the EU’s fear of Eastern European immigration was not properly addressed in the agreements: ‘unlike the Turkish Association Agreement, the Central and Eastern European version did not contain any clear provision on free movement of workers.’

²⁷ At the same time however, Germany itself was seeking closer cooperation with Eastern Europe, and pressured the Schengen countries to lift the visa restrictions to Polish citizens. According to Ferris it was Germany who started to advocate enlargement after its unification in order to share the burden of its dealings with Eastern Europe and Eastern Europeans. L. Friis, (no date), *op.cit.*

²⁸ Presidency Conclusions. Copenhagen European Council - 21-22 June 1993 [online] http://www.europarl.europa.eu/enlargement/ec/pdf/cop_en.pdf accessed 23/10/2008. The meetings in these areas were meant to be ‘of an advisory nature’...[and] [n]o decisions would be taken’.

²⁹ F. Gregory, ‘Good Cops’: *Issues related to EU Enlargement and the ‘Police’ requirements of the JHA acquis*, Working Paper. One Europe or Several Project, 2001 [online] <http://www.one-europe.ac.uk/pdf/w24gregory.pdf> accessed 24/10/2008.

³⁰ Gregory refers to this process as ‘pain for gain’. *Ibid.*

1998.³¹ The Pact was negotiated during the UK Presidency, whose work programme in JHA had an explicit focus on tackling issues such as organised crime, drugs and illicit drug trafficking and was linked to previous EU-wide initiatives to counter organised crime (some of which were discussed in chapter four), such as the Action Plan to combat organised crime and following the Resolution by the Council on the prevention of organised crime.³² It was part of a Union-wide increase of scrutiny over illegal practices and mismanagement on higher level, one of which resulted in mass resignation of the European Commission in 1999.³³

The Pact was designed to enhance practical co-operation in the JHA areas and Europol, envisaging formal agreements with Europol and appointments of liaison officers, mutual assistance and multidisciplinary national teams, etc. The Pact provided for ‘regular monitoring and evaluation of developments in the field of combating organised crime in each of our countries and the definition, as appropriate, of priorities applicable to each country. This monitoring and evaluation will draw on collective evaluations undertaken by the experts from member states and the Commission in the wider framework of the justice and home affairs aspects of the enlargement process.’³⁴ The only mechanism for the signatory countries from CEE to participate in the formulation of the policies against organised crime on EU level was through a group of experts that was planned to be established in connection with the Pact. This group would be working on a very basic level, i.e. identification of threats, monitoring and evaluation of actions, planning, execution and evaluation

³¹ *Pre-Accession Pact on Organised Crime Between the Member States of The European Union and the Applicant Countries of Central And Eastern Europe and Cyprus* (Text approved by the JHA Council on 28 May 1998) (98/C 220/01). As to its effects, the Pact was an ambiguous form of international agreement. It is a non-binding political declaration of intent by which applicant countries express intention to adopt and implement a number of international Conventions to fight organised crime (including one on terrorism), mentioned in the European Union’s action plan on organised crime. It also encourages the member states to ratify those international agreements mentioned in the Pact that have not yet been validated but sets no deadline for that.

³² The Plan set out measures to be taken within the following two years, one of which was signing a pre-accession pact with the CEE countries and Cyprus, Published in OJ C 251, 15.08.1997. The Resolution invited the Commission and Europol to prepare a comprehensive report by the end of 2000, which, among other things, should ‘analyse to what extent ideas and measures for the prevention of organised crime could be taken into account in the process of enlargement and relations with third States.’ Council Resolution of 21 December 1998, OJ 98/C 408/01.

³³ The resignation came as a result of an expert report which exposed fraud, nepotism and mismanagement demonstrated by some members and loss of political control over funds and staff appointments by the whole Commission. House of Commons, ‘The Resignation of the European Commission’, Research Paper 99/32, 16 March 1999

[online] <http://www.parliament.uk/commons/lib/research/rp99/rp99-032.pdf> accessed 22/04/2009.

³⁴ Pre-Accession Pact on Organised Crime, *op.cit.*

of projects. The Pact did not envisage participation of the applicant countries in any of the other 12 working groups within the Policy and Judicial Cooperation in Criminal Matters.³⁵ Furthermore, despite being a seemingly ‘non-binding’ document the Pact actually bound the applicant countries to adopt the EU ‘internal security’ framework for which the EU agreed to assist. This assistance would be in the form of equipment, logistic support (particularly for cross-border cooperation), exchange of police officers, customs officials and judges. The financial assistance would be granted from the budgets of PHARE and MEDA programmes (designed for CEE and Mediterranean countries), as well as indirect involvement of specific Union programmes such as the OSIN, Grotius, Odysseus and Falcone (for training of enforcement and judicial officers) programmes. But according to Monar, the Pact had made a major step in integrating the signatory countries from Central and Eastern Europe (CEECs) into the EU anti-crime agenda, and this integration occurred in a situation of power asymmetry, with unequal benefits for the two sides:

In the context of the Pre-accession Pact the CEECs and Cyprus have accepted to take the EU’s 1997 Action Plan as a starting point for cooperation with the EU, to ‘consider’ (a notable understatement) the establishment of similar national bodies, to make as soon as possible the necessary preparations enabling them to accede to the Europol Convention at the time of accession, to make the ‘statements of good practice’ provided for by the Joint Action on good practices in mutual legal assistance on criminal matters and to make progress towards enacting the legislation enabling them to accede to the 1995 and 1996 EU Extradition Conventions by the time of accession. The ‘regime export’ could hardly have been put into more concrete terms and – with the threat of exclusion looming in the background – the CEECs and Cyprus accepted these terms without making any major difficulty. The EU added

³⁵ For a graphic description of the JHA working structure see J. Monar, *An Emerging Regime of European Governance for Freedom, Security and Justice*, ESRC One Europe or Several? Programme Briefing Note, 1999, [online] at <http://www.one-europe.ac.uk/pdf/Bn2-99.PDF> accessed 12/12/2008.

a 'sweetener' in form of a promise of funding some measures through several existing EC programmes.³⁶

The Pact, as well as subsequent policies developed with respect to organised crime and enlargement, was vaguely defined and sometimes ambiguous. This led to an uneven and unsystematic application of the JHA agenda in the whole accession process.³⁷ This is a reflection of a complexity which became endemic for the JHA area of EU policies, and also the growing belief that the post-communist countries had a specific problem with organised crime and public order in general, as discussed in the previous section. Although the inclusion of EU requirements in the field of crime and immigration control had its precedents (for example, the pressure for strengthening of border control of Italy and Greece wishing to join the Schengen Agreement), in the case of the Eastern European applicants' attention given to the problem of organised crime and its link to the issue of governance has been much more extensive. The candidates had to adopt reforms of all of their criminal justice institutions and, what is more, adopt a *pro-active* anti-crime policy which is not customary for institutions which deliver justice such as the court system or prisons. In practice this emphasis on institutional reform and institutional 'capacity building' became a key policy in EU's relations with its future member-states, and has been the main goal of the EU's policy of assistance to the Eastern European applicants throughout the whole path to full EU membership, going beyond the simple adoption of the necessary *acquis*. The assistance provided by the EU was not simply 'to prepare the ground for the next EU enlargement, but also to develop the ability of countries with economies in transition to tackle organised crime, thus giving them the necessary legal tools and expertise to implement the UN Convention [and *acquis*] properly.'³⁸

³⁶ J. Monar, *Justice and Home Affairs in a Wider Europe: The Dynamics of Inclusion and Exclusion*, ESRC 'One Europe or Several?', Programme Working Paper, 2000 [online] <http://www.one-europe.ac.uk/pdf/monarW7.PDF> accessed 12/12/2008.

³⁷ According to Steve Peers this was the case even in the JHA part of the 2002 Accession Treaties. S. Peers, 'Statewatch Analysis. The EU accession treaty', (no date) [online] <http://www.statewatch.org/news/2003/feb/analysis.doc> accessed 10/11/2005.

³⁸ European Parliament, 'The European Union and the United Nations Convention against Transnational Organised Crime', Directorate-General for Research Working Paper, Civil Liberties Series, 2001, p.93 [online] http://www.europarl.europa.eu/workingpapers/libe/pdf/116_en.pdf accessed 10/11/2007.

In the period between 1998 and 2002 there was a remarkable growth of initiatives on fighting organised crime in CEE. The *modus operandi* in all applicant countries was as follows:

- Speeding up legislation on organised crime (with a focus on international dimensions of organised crime);
- Setting up various agencies for implementation of the new legislation;
- Training the personnel of these agencies, as well as previously existing law enforcement institutions – on very specific issues rather than global/transnational crime; purchasing equipment;
- Creation of a system for data collection (through training and provision of equipment), and establishing contact points for exchange of information with EU law enforcement.³⁹

These tasks of the JHA relations between the EU and the applicant countries aimed at helping the applicant countries establish or modify their policy with regards to organised crime *inter alia* other JHA issues. However, throughout the accession process (1997-2004 and 1997-2007 for Bulgaria and Romania) this policy produced dubious results and for Bulgaria and Romania – the Balkan candidates which were not integrated as part of the first Eastern Enlargement in 2004 but only joined three years later in 2007- all the elements of JHA policy transfer were initially seen to be failing or unsatisfactory.

The initiatives on fighting organised crime were much more intensive in the case of the Balkans (officially referred to as Southeast Europe, or SEE, to avoid the negative connotation of the word ‘Balkan’) and have been more directly linked to issues of governance, state-building and security in both soft and hard senses due to the alleged link between crime and war. Some of the initiatives have included a London

³⁹ K. Gachevska, ‘Exporting Anti-crime Policies: EU Phare Projects on Fighting Organised Crime’ in European Studies Conference Proceedings, University of Rouse Press, 2005, pp.32-37.

Conference on Organised Crime in South Eastern Europe which aimed at enhancing the political will to fight crime in those states (significantly, the next high level conference after the Dayton Peace Conference in 1995); the Thessaloniki Declaration on the Western Balkans (June 2003); EU-Western Balkans Forum JHA Ministerial Meeting (December 2005); Southeast European Cooperation Process (SEECF) joint statement on JHA (February 2006), the Stability Pact initiative on Organised Crime (SPOC) board session in Bled (October 2005); the Working Table III meeting in Prague (November 2005) – all of which have dealt with the problem of organised crime in the Balkans. Added to these are numerous other initiatives and international structures established to promote the fight against crime including the establishment of a special SECI Regional Centre for Combating Trans-Border Crime in Bucharest, Romania in 1999 or the endorsement of the issue of organised crime in the Stability Pact for South Eastern Europe (SPOC). However, EU conditionality and financial aid assistance for the fight against crime are the key instruments for building the anti-crime regime in the New Europe.

5.4. Financial assistance for fighting crime: the PHARE programme

PHARE was started as a Community programme in 1989 and its initial aim was facilitating the transition to market economy in Poland and Hungary. It was however extended to the other CEE – associated, and later applicant – countries.⁴⁰ In the period between 1990 and 1994 the programme's aim was assistance with economic transition and the main areas where the funds were utilised were: 'private sector development and enterprise support; education, health, training and research; infrastructure (energy, transport and telecommunications); environment and nuclear safety; agricultural restructuring; humanitarian and food aid; public institution and administrative reform; and social development and employment.'⁴¹ After the Essen EU Summit in 1994, the PHARE programme was transformed into a policy instrument for enlargement, and its main task was the preparation of the recipients

⁴⁰ Some of the assistance for non-accession countries Albania, Bosnia and Herzegovina and the FYR of Macedonia was also financed by the PHARE budget. PHARE, for a time, became the world's largest assistance programme. A. Pusca ed., *European Union: Challenges and Promises of a New Enlargement*. New York, NY, USA: International Debate Education Association, 2003, p. 33.

⁴¹ G. Pridham, *Experimenting with Democracy: Regime Change in the Balkans*. London, UK: Routledge, 1999, p.156.

for EU membership.⁴² The support provided by the programme was in most cases technical assistance at governmental and ministerial level whereas the investment support was limited. The priority setting, programming, project planning and supervision of the implementation were all centrally controlled at the European Commission Headquarters in Brussels.⁴³

This arrangement was altered by the decisions of the Luxemburg Summit in December 1997 which stated that PHARE would become a key structural instrument (similar to the EU Cohesion Fund for member states) which would ‘focus on accession by setting two priority aims: the reinforcement of administrative and judicial capacity (about 30% of the overall amount) and investments related to the adoption and application of the *acquis* [i.e. the EU’s body of treaties, laws and practices] (about 70%).’⁴⁴ In 1998 PHARE was further re-adjusted via the so-called National Programmes for the Adoption of the Acquis (NPAA) in order to develop closer relations with the relevant ministries. This change was designed to make the assistance more applicant-focused and respond to the individual needs of each candidate country, which now had the opportunity to set their own policy agenda. Nevertheless, the role of the EU in priority setting had not been altered in practice as the priorities identified by individual countries were directly linked to the need to comply with EU requirements.⁴⁵ The EU assistance was presented as ‘demand-driven’, but was in fact ‘accession-driven’ which put more emphasis on the role of the applicant country as a future member-state, rather than a state in its own right.⁴⁶ Linking the development agenda to membership also demanded priority be given to JHA policies as prescribed by the EU, i.e. changes of criminal law and increased law enforcement with a focus on fighting organised crime.⁴⁷

⁴² *Ibid.*

⁴³ A. Bothorel, ‘The history and development of the PHARE programme’ in *Overview of the PHARE Programme and the New Pre-Accession Funds*, Proceedings of a seminar at the EU Information Centre in Budapest, 1999 [online] <http://europa.eu.int/comm/enlargement/pas/PHARE/publist.htm> accessed 30/07/2004.

⁴⁴ G. Pridham, 1999, *op.cit.*, p.157.

⁴⁵ In these circumstances the applicant countries’ agenda was in fact an ‘accession agenda’ rather than a development and growth agenda.

⁴⁶ A. Bothorel, *op. cit.*

⁴⁷ This move to accession prioritisation was an additional complication of the CEE countries’ transition because of the multiplication of demands, and their various sources like the local electorate, the EU, other international institutions, the USA, etc. In some cases there were contradictions and mutual exclusion of some of those demands but the increasing politicisation of EU membership in the applicant countries led to increasing convergence of local and EU agendas. Local elites presented

The area of Justice and Home Affairs became a key area in PHARE after 1998. The new element in the programme was the so-called *twinning strategy* meant to ‘facilitate capacity building or institution building in the applicant countries through interaction with EU experts in a joint attempt at developing the structures and systems, human resources and management skills needed to implement the *acquis*’.⁴⁸ In 1998 around 30 percent of the PHARE budget was prescribed for institution building and the rest was for investment support, i.e. purchase and delivery of technical equipment.⁴⁹ Missions in the JHA area had already started in Hungary, the Czech Republic and Slovakia in 1997, and after 1998, they expanded in nine applicant countries from CEE including Bulgaria, Romania and the Baltic countries. In 1998 25 out of 110 twinning projects amounting to €75 million, were in the area of JHA, and the costs for them amounted to €14 million, plus €6 million support from the Catch-Up Facility.⁵⁰ In total, for the period 1997-1999, the budget for projects on JHA ‘institution building’ in the applicant countries was approximately €50 million, and the number of projects came to approximately 47.⁵¹ Most of the projects focused on border control, judicial institutions, police training and the fight against organised crime in that order of priority.⁵² The most active partners were

membership as panacea for the economic and social ills, not only because of increased investment but because of the normative power of the Union which was capable of bringing law and order – an idea promoted by the EU itself.

⁴⁸ European Commission Enlargement Directorate General, ‘Twinning in Action’, October 2001 [online] <http://europa.eu.int/comm/enlargement> accessed 04/04/2004.

⁴⁹ A. Bothorel, 1999, *op.cit.*

⁵⁰ The PHARE Programme Annual Report 1998 [online]

http://europa.eu.int/comm/enlargement/pas/PHARE/ar98/index_ar98.htm accessed 30/07/2004. The Catch-Up Facility was an additional support programme for Romania, Slovakia, Latvia, Lithuania and Bulgaria, financing projects in areas where problems have been identified by the Commission’s Opinions on these countries (one of them being corruption). *Ibid.*

⁵¹ Different sources give different figures, therefore the numbers mentioned in the text must be considered approximate but they nevertheless demonstrate the increasing emphasis on JHA in the provision of financial assistance from the EU to its future members.

⁵² For the same period, 1998/99, out of 47 projects 18 were on strengthening of the borders and customs according to the Schengen requirements; 11 were on strengthening the independence and functioning of the judiciary; another 11 were on strengthening law enforcement/police and the rest on various issues such as law approximation/adoption. Fight against organised crime is included in 6 projects only – in the Czech Republic, Hungary, Romania and Slovenia. Composite Paper on the Commission Reports, October 13, 1999, Annex 4

[online] http://europa.eu.int/comm/enlargement/report_10_99/pdf/en/annex4_en.pdf accessed 04/04/2004.

Germany (18 projects), France (9 projects), Austria (6 projects), the UK and the Netherlands (5 projects each).⁵³

The number of projects in the JHA area in the following three years was 96, which in total made 144 projects for the period from 1997 to 2002. The JHA projects came second in number only to the area of Public Finance which had 162 projects.⁵⁴ Justice and Home Affairs was one of the multi-beneficiary PHARE programmes covering the fight against organised crime but issues, connected with a broader understanding of organised crime were addressed under other programmes such as the Catch-Up Facility (corruption, customs intelligence, the fight against drugs). Furthermore, in 2001 the European Commission launched a new project on co-operation in criminal matters in seven of the candidate countries: Bulgaria, the Czech Republic, Hungary, Poland, Romania, Slovakia and Slovenia. The project leader was the United Kingdom, with France and Italy as consultants, and Austria, Belgium, Germany, Netherlands and Spain contributing expertise.⁵⁵ All the projects involved EU partners with very few exceptions where the projects are managed exclusively by the applicant state. There was a disproportional involvement of some member states, and especially the UK, compared to other member state partners. Thus the PHARE project displayed a peculiar 'division of labour' among the EU member states where experts from the UK, for example, were particularly active in the measures against organised crime with regards to police training and identification of necessary technical equipment, etc. Developing law enforcement/policing and use of the latest

⁵³ There was a geographical division of countries of 'interest' for example the Scandinavian member states are most active in the Baltic republics, Germany had interests in Central European candidates, etc. As the JHA is a territorial policy area, such regional cooperation was necessary. However, in cases such as transfer of know-how and expertise such considerations were not necessary but the EU did encourage 'twinning', seen as more important than the actual quality of assistance. Thus, a Joint Action adopted by the Council for establishing a mechanism for collective evaluation of the JHA *acquis* implementation by the applicants allows for one or more member states to 'give particular assistance in preparing and maintaining for a particular candidate comprehensive reports which would form the basis of evaluation', Joint Action OC 98/429/JHA.

⁵⁴ European Commission, *Towards The Enlarged Union*, Strategy Paper and Report of the European Commission on the Progress Towards Accession by Each of the Candidate Countries, Brussels, 2002 [online] <http://europa.eu.int/comm/enlargement/> accessed 04/04/2004; Enlargement Strategy Paper Report on progress towards accession by each of the candidate countries [online] http://europa.eu.int/comm/enlargement/report_11_00/pdf/strat_en.pdf accessed 04/04/2004. There is no detailed information on the type of the projects in the Strategy Papers (former Composite Paper) after 1998. Only the one published in 1998 (see note 19) provides such information. The subsequent reports give only the number of projects.

⁵⁵ *Enlargement Weekly* – 22 March 2001 [online] http://europa.eu.int/comm/enlargement/docs/newsletter/weekly_190301.htm accessed 16/04/2004.

technology in the fight against crime is a priority of the UK's domestic criminal justice policy,⁵⁶ which it had successfully exported to EU anti-crime policy.⁵⁷

The external financial regulations of the Union stipulate the rules for granting funds under PHARE and other programmes.⁵⁸ The PHARE projects were to be carried out by natural or legal entities from the public or private sphere, after open or restricted tenders. Those entities have to be established and conduct their business in an EU member state or in one of the programmes' beneficiary countries but there was no specific requirement regarding ownership, i.e. they could still be EU-based company affiliates. The individual experts to be involved in a PHARE project must also be nationals of a member state or PHARE country. The same rule applied to supplies, which had to originate in the EU or in PHARE countries. Exceptions were rare and these rules were even further tightened.⁵⁹ The provision of expertise and supplies has been predominantly, if not exclusively, from the EU countries. Since the accession requirements oblige the applicant countries to comply with EU standards, these standards would subsequently require the technical supplies and expertise from EU countries, even in areas where no clear EU standards exist, such as policing.

The PHARE aid programme was in practice funding the transfer of expertise and technical products from the Union to the applicant countries. The fact that there was no requirement of ownership of the companies involved in the projects would mean that even if it seemed that it was a local company from a PHARE country, it might well not be. Measures to increase transparency of the tenders and contracts have been undertaken but they did not substantially change the EU driven 'demand – supply'

⁵⁶ See for example the List of UK Presidency seminars and special events, where half of the events (4 out of 8) focus on technology in the fight against crime (originating from the EU and North America) at <http://www.homeoffice.gov.uk/euro/relat.htm> accessed 25 March 2004.

⁵⁷ The involvement of the UK in reforming the justice and police sectors in the applicant countries is a result of a very active British intelligence sector. This activity has even led to accusations against the UK for using its intelligence services' assets for industrial espionage on European countries, in collaboration with American intelligence, which have been covering this activity with its fighting crime objectives, amongst other things. CORDIS News, *Liikanden responds to Echelon spy network claims*, 4 April 2003. Although the case was not proven, such suspicions amongst EU member states have led to problems over the transfer of data, and general distrust among EU members.

⁵⁸ EU Financial Regulation, Title IX 'Special Provisions applicable to External Aid'; PHARE Regulation - Council Regulation 3906/89 and subsequent amendments.

⁵⁹ F. O'Shaughnessy, 'PHARE tendering procedures and sources of information on PHARE' in *Overview of the PHARE Programme and the New Pre-Accession Funds*, Proceedings of a seminar at the EU Information Centre in Budapest, 1999. [online] <http://europa.eu.int/comm/enlargement/pas/PHARE/publist.htm> accessed 30/07/2004.

circle. As a result, even projects that were prepared by the PHARE countries set their objectives according to EU requirements and activities that would receive funding by the Union instead of prioritising their own agenda, or alternative and/or home-based providers.⁶⁰ Assets that did not comply with PHARE requirements are supposed to be provided by the applicant country and only if that country could afford funding from the national budget. As a result of these arrangements, the JHA projects under PHARE were often tailored to fit what a given institution could provide as expertise or equipment, with less regard to the real crime situation in the recipient country. The purchase of EU-made equipment has been a controversial strategy as well, since that created a technological dependence that had to be funded by national budgets in the future.

It needs to be stressed that in itself, the size of the financial aid channelled through PHARE was not significant compared to the overall budget of the EU, and the budgets of the applicant countries.⁶¹ However, the amount spent on JHA *within* PHARE grew from the start of the programme, which re-enforced the clear signs to the applicants of how politically significant this area would be for their future accession. The requirements which the PHARE programme was designed to meet became a priority in the applicants' internal policies, and this was valid for the area of crime fighting and all associated policies such as border control, immigration and visa policies, etc. The relevant authorities in the applicant countries established special bodies and departments within ministries in order to administer the financial aid and those bodies had substantial influence within the government structures despite being funded by external bodies. The PHARE-funded transfer of expertise and influence on the agenda-setting of the applicants has led to the new anti-crime policies in the applicant countries being indirectly influenced by the EU requirements and the activities financed by these projects.

⁶⁰ The design of those projects, on the other hand, often involved firms and experts from the EU. The rule (introduced the 1997) that firms that have been engaged in the project preparation cannot participate in the tender does not affect the possibility of those firms being linked, for example as previous partners, with companies bidding for the project.

⁶¹ The whole pre-accession aid forms around 1.7% of the EU budget which collects around 1% of its member states GNP. See for example T. Wynn, 'The EU Budget - Public Perception & Fact. The European Union - how much does it cost, where does the money go and why is it criticised so much?', Committee on Budgets of the European Parliament [online] <http://www.terrywynn.com/Budget/EU%20Budget%20-%20Perception%20&%20Fact.htm> accessed 21/04/2009.

5.5. PHARE projects in practice

The PHARE programme continued to be a channel of financial ‘assistance’ for the CEE applicant countries after 2000. In that year two other programmes were introduced – ISPA (for large-scale infrastructure projects) and SAPARD (for adoption of the *acquis* in the field of agriculture and rural development). PHARE was entirely devoted to institution building (30% of the funding) and *acquis* related investment (70%), and apparently was seen as more important than the other two because it accounted for half of the financial assistance for those countries.⁶²

Agenda 2000 set up the sources of the ‘accession-driven’ priorities of PHARE: the Accession Partnerships (first approved in 1997) and the National Programmes of the individual countries. Both documents list the problem areas for each individual country, and the issue of organised crime is one of those areas common to all applicants. The Accession Partnerships give a more general description of necessary measures as short-term and medium-term priorities. The short-term priorities were: implementing policy on organised crime, corruption and economic crime (legislation; implementing structures; sufficiently qualified staff; better co-operation between institutions); and the medium-term priorities were usually: continuing the fight against organised crime, trafficking in women and children, drugs trafficking, money laundering and corruption. The National Programmes were more specific and formulated particular actions to be undertaken, such as adoption or amendment/harmonisation of concrete laws, improvement of strategies on the fight against organised crime; creation or restructuring of relevant institutions; training of law enforcement staff; improving the quality of technical equipment of units dealing with organised crime.

Reports on enlargement frequently stress the importance of those measure and most cases (individual countries’ reports) identify the lack of or insufficient progress in the fight against organised crime. Yet, the percentage of projects and funds from

⁶² European Commission, *The Enlargement Process and the Three Pre-accession Instruments: PHARE, ISPA, SAPARD* Proceedings of conference organised by DG Enlargement and the Permanent Representations of Sweden and Austria to the European Union on 5th March 2001, European Commission Enlargement Directorate General, February 2002 [online] <http://europa.eu.int/comm/enlargement/pas/PHARE/publist.htm> accessed 30/07/2004.

PHARE on projects directly connected with crime and law enforcement is relatively small compared to those allocated to other aspects of JHA. The main objectives in those PHARE projects that were linked, in one way or the other, with the fight against organised crime, were the adoption of specific legislation and strengthening/creation of specific institutions. The activities meant to achieve that were: training of personnel, preparation of plans and programmes, and purchase of technical equipment. There were a number of projects, whose general description, justification and budget were laid down in *project fiches*.⁶³ These fiches describe a project but do not contain any analysis of the crime situation in the relevant country and the objectives set up are mainly stated as fulfilment of the EU requirements and compliance to EU standards.⁶⁴ Consequently, the main sources of verification of the results and achievements of the project are the Commission reports on enlargement and other reviews and reports of international organisations and institutions (such as the OECD, IMF, World Bank, etc.).⁶⁵

A few of those project fiches will be briefly discussed here. Although other projects are also concerned (mainly or partly) with the issue of organised crime, the ones discussed below are selected as representative of the overall assistance policy and the general conclusions drawn from their analysis could be applied to all projects. The selected examples represent the three main objectives of the PHARE funding for JHA: adoption or harmonisation of legislation (organised crime or forms of organised crime), strengthening or creation of institutions (law enforcement and judiciary, and intermediary agencies) and provision of equipment, which is in fact the main activity of most projects.

Project fiche ‘BG 0103.07 Bulgaria Combating money laundering’ is one of the examples of an effort to exert pressure on the legislative process and re-structuring of

⁶³ At the time of writing these fiches were archived on the EU website http://ec.europa.eu/enlargement/fiche_projet/index.cfm accessed 13/04/2009.

⁶⁴ The phrase ‘European standards’, as well as ‘compliance’ to these are mentioned all project fiches, and especially in the main goals of the projects. However, no specific reference is given in any of the documents. It is not clear what is meant by ‘European’ either, and if this is an EU standard or European as distinct from Asian for example.

⁶⁵ It should be noted that the projects identify national sources of verification (competent institutions and in some cases - the media), as well. However, since the overall objective of the projects is compliance to EU requirements, those sources would be less important.

institutions.⁶⁶ The overall objective was strengthening the system for prevention of money laundering, and the main *stated* purpose of the activities was the harmonisation of legislation. This is an example of direct involvement of the PHARE programme in the democratic process in Bulgaria as EU experts, rather than a Parliamentary commission carried out the assessment of legislation. However, the actual activities in the Project come down to organising a seminar in which EU experts would help with the assessment of the anti-money laundering legislation, and also preparation of a set of measures (preferably by ‘legal experts’) for improvement of the legal capacity for prosecuting money laundering. The strengthening of the institutions comes down to establishing an independent Bureau of Financial Intelligence, or BFI (i.e. establishing this body as separate from its predecessor, the Directorate at the Ministry of Finance) restructuring it into an independent administrative body – Agency, which would function within the same ministry and would be gathering its information mainly from that Ministry but without being under its control. The justification for this lack of control from the executive power was the argument that BFI would not have ‘investigative power of the police and investigative authorities’. Its functions are ‘to store, examine, analyse and disclose’ information to the respective competent authorities, which include ‘competent authorities abroad’. Therefore, the Project’s activity in connection with the BFI was designing the latter by following a model from its EU partners. The general activities of the project are: developing plans, strategies, methodologies, as well as feasibility studies and consultations with EU IT experts for the purchase of equipment that is to be financed by subsequent PHARE projects.⁶⁷

The budget of the project was €1.2 million, exclusively for ‘institutional strengthening’ and provided only by PHARE (with no national co-financing). The financial resources were to be allocated almost exclusively for about 30 experts from EU member state(s). Only one project leader from Bulgaria was envisaged and he/she would be responsible only for the Twinning Covenant. This would mean that about €40 000 would be spent on each expert (but proportions would vary).

⁶⁶ Summary Project Fiche. Combating [*sic*] money laundering. Désirée number: BG 0103.07. Twinning code: BG/IB/2001-JH-03 Location: Sofia-Bulgaria [online] http://ec.europa.eu/enlargement/fiche_projet/document/bg0103-07-money_laundering.pdf accessed 01/04/2005.

⁶⁷ All quotes in this section are taken from the relevant project fiche.

Furthermore, one of those experts would be employed for 12 months and probably another one for the same period (project leader). The rest would be experts on short or medium term contracts, the duration of which were respectively 20 and 40/60 days. Thus the lump sum of €1.2 million would be spent on EU experts, most of whom would spend less than two months working on the project.⁶⁸ The purchase of equipment and the provision of training lack any justification other than compliance to EU requirements.

The Project fiche ‘CZ01-07-07 Czech Republic Improving the Fight Against Violent and Organised Crime’ is directly connected with the main issue of organised crime.⁶⁹ The overall objective of this project is achieving ‘stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities’, but the project’s purpose is focused on law enforcement institutions and their fight against violent and organised crime. The project envisaged an improvement of the fight against organised crime through the purchase of equipment from EU manufacturers, training from EU experts and study visits. The project fiche states that the Czech police were in need of two sequencers for the national DNA database but as these are manufactured outside the EU, the national budget is supposed to cover the expenses, but only if it could afford it. Otherwise, as stated in the fiche, the sequencers would not be purchased at all. There is no analysis of how these activities would improve the fight against organised crime or strengthen the institutions fighting against organised crime.

The budget of the project amounts to €2.40 million, of which €1.8 million was provided by PHARE and €0.60 million from national co-financing. However, more than a half of the national co-financing, €0.35 million, was to be spent on the two sequencers that cannot be purchased through PHARE, and the rest, €0.25 million, was allocated for the National Headquarters against Forgery (including the establishment of a special technical-analytical unit of 4 experts), namely purchasing

⁶⁸ The same project fiches mentions other PHARE funding for BFI through other projects, namely a significantly lower sum of €5 000 for software. It can be assumed that the software was bought from EU firms, according to PHARE regulations.

⁶⁹ Standard Summary Project Fiche. Improving the Fight against Violent and Organised Crime. Désirée Number: CZ01-07-07. Twinning Number: CZ01/IB/JH/06-TL. Location: Police Presidium, Ministry of Interior of the Czech Republic.
[online] http://ec.europa.eu/enlargement/fiche_projet/open_document_fp.cfm?do_id=30792 accessed 1/04/2005.

a spectral comparator, colour laser printer, electronic detection system, video microscope, 2 notebooks, digital camera, etc. The budget for twinning was €0.15 million, provided by PHARE, where the national contribution would be ‘in the form of provision of offices, working environment, etc.’ in ‘total price of more than €0.3 million. The leader of the project for improvement of the fight against organised crime had to come from EU member state and was supposed to work for four weeks only, of which two in the Czech Republic, and two – in his home country. The funding for that Project Leader was €15.000 and his task was to co-ordinate and ensure that the short-term experts were providing training and study visits of Czech experts to the member states. The total of €135.000 was to be spent on training and study visits, €40.000 for short-term experts from EU member states.

The project fiche was not very clear about exact allocation of the funds. Thus, €2.05 million, or about 85% from the total budget of €2.40 million, was to be spent on equipment produced in the EU and EU experts in the field of countering organised crime, as well as travel expenses for visits. It must be added that 12 % of this money came from the Czech national budget – €250 000. This national contribution looks small compared to the overall size of the project but seen from a different perspective, it was more than half of the annual budget of the Czech Institute of Criminalistics for research and development projects (approx. €0.4 million as stated in the same project fiche).⁷⁰ The insufficient funding for research on new technologies conducted in the Czech Republic is hinted at by the authors of the project fiche as a critique of the EU policy of restricting the purchase of equipment to EU-made products.

⁷⁰ The fight against organised crime has partly or fully justified funds under other projects in the Czech Republic. These include: Project CZ9810-02 Strengthening of the Institutions of Law Enforcement/Asylum Institutions, which includes a professional training programme for police officers and Ministry of Interior staff in problems of combating organised crime; CZ 9904-01-03 Strengthening Institutions in their Fight against Organised Crime - improvement on analytical methodology of investigation and thus strengthening the fight against organised crime and mainly drugs, illegal treatment of nuclear materials, protection against terrorism (it supplied technologies for DNA analysis and drug profiling, laboratories for investigation of banknote forgery, for identification of stolen vehicles, detection of radioactive materials, etc.); CZ 2000-06-01 Strengthening the Fight against Organised Crime - provides support for implementation of the governmental policy against OC, as well as some software equipment, training, witness protection, etc.

Another project involving activities in the legislation sphere is Project fiche LE01.04.03 Latvia: Preventing, combating and reducing organised crime.⁷¹ Although the project fiche states that ‘the activities of this project will be more concentrated to prevention of organised crime’ [sic], the project is exclusively focused on law enforcement and involves the relevant institutions of the State Police, Prosecution Office, State Revenue Service, and Ministry of Justice. The main objective, as stated in the fiche, is: ‘[the]effective reduction and combat of organized crime, including money laundering’, and the immediate objective is: ‘[to] increase capacity and co-operation between involved institutions, improve training and education process of personnel, improve the cross-border surveillance mechanism and ensure effective implementation of witness protection program’. The envisaged activities are:

- Development of Common long-term strategy and Action plan in the field of prevention and combat of organised crime *inter alia* introducing elements from EU second money laundering directive as well as determining corruption as predicative crime.
- Preparation of an assessment report on present situation including analysis of legislation (criminalization of membership of organised-crime groups as defined in the *acquis* and the criminalization of legal persons involved in bribing and money laundering and legal protection for ‘whistle blowers’, clear rules for party financing); co-operation in Latvia; international co-operation; criminal activities (economic crimes, drugs, money-laundering etc.), including risk assessment.
- Preparation of necessary amendments in the legislation, including harmonising Latvian legislation in the field of cross-border surveillance.
- Seminars on inter-ministerial cooperation issues: workshop for high level policy makers and 6 seminars for officers of involved institutions in the field of prevention of organised crime.

These activities were closely linked with the country’s accession to the EU and its JHA requirements, and the actual reports and assessments, as well as legislative

⁷¹ Standard Summary Project Fiche. Preventing, Combating And Reducing Organised Crime Désirée Number: Le01.04.03. Twinning Number: Lv/2001/Ib-Jh/02. Location: Latvia [online] http://ec.europa.eu/enlargement/fiche_projet/document/le0104-03-organisedcrime.pdf accessed 01/04/2005.

proposals would be prepared in close coordination with EU experts. The project fiche itself states that: ‘the EU expertise is necessary to assist the Latvian law enforcement authorities and inter-ministerial bodies including the Crime Prevention Council to audit the current situation and prepare the crime prevention strategy in Latvia similar to the EU crime prevention strategy.’⁷²

The improvement of the training process of involved institutions was to be achieved through establishment of modern training classrooms for all involved institutions (computers, servers, projectors, screens, video cameras, TV sets, video recorders, overhead projectors, photocopiers).⁷³ The effective witness protection programme was to be ensured through properly equipped courtrooms (conferencing software server, 4 video cameras, sound system, 2 video screens, voice and image modification programs, workstation, installation) and increased public confidence in the process of protection of witnesses. The only investment in equipment in that project was for those two objectives, namely 4 classrooms and courtrooms. It accounted for around 43% of the total budget (€1 397 000) – €611 000, where €153 000 was from national co-financing. The rest of the budget was dedicated to institution building – €780 000 (€70 000 of which from national budget), and technical assistance – €6 000 (exclusively from the national budget). Essentially, the PHARE budget for ‘twinning’ (€650 000) was to be spent on 8 experts from EU states, seven of whom would be, in effect, employed for a short-term period. Although the fiche was not clear about the rest of the funds, they would presumably cover the rest of the expenses such as rooms, travel costs, one local expert, etc (€70 000). Only the PHARE financing would be a subject of contracting according to the fiche: Contract1: Twinning covenant – €650 000; Contract2: Supply contract –

⁷² *Ibid*, p.2.

⁷³ The setting up of these classrooms was a key concern of the authors of the project and this was justified as follows: ‘All in the project involved institutions have presently no special and equipped training classrooms, where they could organise training and seminars for already working personnel on different issues of organised crime. Therefore it is necessary to establish such training classrooms, which will improve training conditions of personnel. The State Police has the possibility to send their officers to the Police Academy for qualification courses, but they are for charge. The establishment of training classrooms will give the possibility to improve the training process in each institution, as well as will be as a base for effective implementation of in the frame of this project developed training programmes. These classrooms will allow it to organise the training on two levels: theoretical and practical – officers can study theory and at the same time use their knowledge practically through training on computers. These classrooms will also allow organise more practical seminars on different seminars on organised crime and involve in the training more working personnel of involved institutions. That will raise the capacity of fulfilment of functions of involved institutions and improve crime prevention process’ [*sic*]. *Ibid*.

€458000; Contract3: Technical assistance – €60 000, which amounted to the total PHARE contribution. This would effectively mean that the money from the national budget (the rest €229 000) was not subject to the PHARE rules, and was not going to be granted to EU companies and EU experts (i.e. it would remain in the country).

The project LT010701 Lithuania: Strengthen the Fight against Organised Crime through the Establishment of the National Europol Bureau and Upgrading the Forensic Science Service (FSS) central laboratory is another case of ambiguous institutional development.⁷⁴ This was a project for the establishment of an institution that would be linked with an external body, i.e. Europol, where national control over its activities is weakened. After being ratified by the Seimas (the Lithuanian parliament) the agreement with Europol would be valid as a law. However, at the time of the agreement's signing, the links with Europol fell into the category of 'assumptions'. As the project fiche states in its Annex 8 'Background and Justification':

Currently information on organised crime is collected, analysed and stored in the Organised Crime Investigation Service located within the structure of the Criminal Police of the Police Department at MIA. Concerning information possessed by Europol, up to now Lithuania has not received any information from it. According to the requirements of Europol convention, Europol was created to co-ordinate the fight against organised crime among member states and it is a closed organisation, which bases its co-operation with third countries only on signed agreements. The EU has made a political decision to sign agreements with the third countries only at the beginning of the year 2000. Though the International Co-operation Service and the Interpol Lithuanian National Bureau of the Police Department at MIA were sending information of strategic character on separate issues to the Central Europol Bureau, but this was done unilaterally.⁷⁵

⁷⁴ Standard Summary Project Fiche. Strengthen the Fight against Organised Crime through the Establishment of the National EUROPOL Bureau and Upgrading the Forensic Science Service Central Laboratory. Désirée Number: LT 01.07.01.

⁷⁵ There was no expectation that this flow of information would become bilateral *before* accession of Lithuania to the EU. Given the fact that Europol has been seriously criticised for lack of democratic

The project dealt primarily with the practical arrangements for the establishment of the national Europol Bureau. These included: preparing a ‘proposal for operational rules of the National Europol Bureau and their implementation methods drafted corresponding to the requirements of the Central Europol Bureau, and covering, *inter alia*, principles of activity, working principles according to the Europol Convention and other related EU documents’; and also the purchase of appropriate data processing and communication systems designed as required by the Central Europol Bureau, and the preparation of training programmes concerning the use of all new systems.⁷⁶

The budget of the project was quite significant – €5.5 million in total, of which €3 million was provided by PHARE, and the remaining €2.5 million from the national budget. The striking detail in the budget was the allocation of the bigger part of the national contribution, namely ‘investment in purchase, renovation and also adaptation of premises for laboratory purposes’ for FSS (€2.2 million). Additionally, the co-financing funds relating to investment components and amounting to €2.25 million ‘[would] be contracted separately before the Twinning and Training Package commences’, and presumably outside the framework of the project. Essentially, the establishment of the National Bureau would be financed by PHARE, which allots only €0.25million for hardware and software, and €0.3 million for twinning and training, to which €0.1 million for technical assistance could be added. The larger

oversight, this case would be even greater because Lithuania, as well as all the rest of the applicant countries, did not have access to the decision making process in the JHA framework. Furthermore, the information dispatched to Europol would probably be collected from various national institutions because the project envisaged the establishment of communications links to ‘police sub-divisions of 10 counties of Lithuania, and...direct links to other competent law enforcement institutions. These [would] include the Customs Department at Ministry of Finance, State Border Protection Service, Migration Department at MIA, Prosecutor General’s Office, Special Investigation Service, and in cases of terrorism the State Security Department’.

⁷⁶ The other part of the project contained similar arrangements for the Forensic Science Service Central Laboratory: a proposal for appropriate analytical equipment and modern databases; assistance provided for establishing working contacts to international suppliers of reagents and other operational material; proposals for setting up the new quality assurance unit at the FSS Central Laboratory; training programmes designed to instruct seventy specialists of the FSS Central Laboratory and a selected number of FSI specialists in operating the new equipment and using the databases acquired under the project; the programme for the dissemination of information on new examination methods targeted at some 80 judges and prosecutors and 20 representatives of law enforcement institutions.

portion of the funds was to be spent on analytical equipment for FSS (€1.55 million), as well as twinning and training of the latter (€0.8 million).⁷⁷

The scope of the PHARE projects, following the logic of the expansive involvement of the EU in building the JHA capacity of the applicant countries, covered even areas such as the prison service. An example was the project PL01.03.10 Poland: Strengthening the capacity of the Services of the Administration of Justice in Poland to combat organised crime and carry out international legal co-operation.⁷⁸ The objective of the project was: improving the effectiveness of the Prosecution Service and Prison Service in combating organised crime; improving international co-operation in criminal and civil matters; preparation of the Polish justice system for participation in the European Judicial Network that operated on the basis of the Joint Action of 29 July 1998 on the creation of a European Judicial Network. In practice, the activities would involve, apart from training and data transmission, ‘establishing the network of judges and prosecutors – consultants in international co-operation – who would afford assistance in executing foreign requests and preparing requests for co-operation issued by Polish judges and prosecutors, carry out subject-training for judges, prosecutors, and judge's and prosecutor's trainees, and serve as ‘contact points’. The project planned also to establish ‘the electronic database that facilitates access to information necessary to carry out the international co-operation and that contains bodies of legal acts, other documents and analyses, forms of requests for assistance, and practical information such as addresses of competent foreign institutions’.

In practice, the strengthening of the Polish administration was to be achieved through: further training of the prosecutors involved in combating of OC – training and study visits, purchase and installation of hardware and computer networks; additionally, the project envisaged delivering training to the Prison Service staff

⁷⁷ FSS's role in the fight against organised crime was not particularly significant. In 1999, FSS had conducted 9792 examinations, more than half of which on materials, products, and mainly food products (the latter are more than a third - 3400).

⁷⁸ Standard Project Fiche. Justice - organized crime and international co-operation. Strengthening the capacity of the Services of the Administration of Justice in Poland to combat organised crime and carry out international legal co-operation. Number: PL01.03.10 Twinning number: PL/IB/2001/JH/02. Location: Poland
[online] http://ec.europa.eu/enlargement/fiche_projet/open_document_fp.cfm?do_id=28712 accessed 01/04/2005.

involved in combating organised crime and providing the units of the Prison Service covered by the project with an up-to-date IT system to facilitate collecting, processing and transferring data between the Prison Service and other relevant agencies (Prosecution Service, Police, Border Guard, etc.) involved in combating of organised crime.⁷⁹ Another detail was the plan to establish 'positions of judges- and prosecutors-consultants' for international co-operation and the selection of judges and prosecutors to take those positions. The position of judge-consultant of international co-operation and prosecutor-consultant of international co-operation would be established within the courts of justice and prosecutors offices structure, and appointed judges and prosecutors would receive a monthly bonus, (the costs mentioned above would be covered by the Beneficiary). The total budget of the project was €6.8 million, of which €4.9 was from PHARE, and €1.9 – national co-financing. Twinning and TA co-financing would comprise Polish experts participation, lease of audio and translation equipment, international tickets, etc.) – €0.95 million and the same amount in total for hardware – €0,75 million and software – €0.2 million. In total, €4.35 million was allotted for hardware and software, and the rest of the budget €2.45 million – for institution building where the foreign experts' expenses (€1.5million) were covered by PHARE only.

The last project to be discussed is PL01.03.09 Poland: Fight against crime II, which had the more straightforward objective: Reaching compliance with priorities included in 'Accession Partnership' and 'National Programme of Approaching Accession' regarding Titles IV TEC and VI TEU.⁸⁰ The purpose of the project reflected the key purpose of the EU-wide efforts in combating organised crime: information gathering and data exchange. The project had the following objectives:

⁷⁹ This involvement of the Prison Service in the project is explained as follows: '...Inmates originating from structures of organised crime represent large threat, not only to the public but also to penitentiary establishments and other inmates and staff. Efficient contribution of the Prison Service to combating of organised crime depends on many various factors. However, as in case of the Prosecution Service, issues related to providing the Prison Service with up-to-date equipment and system to capture and analyse data and improving professional skills of the Prison Service staff are the most important.' *Ibid*, p.2. In practice this would mean that suspect in pre-trial detention (i.e. not even convicted) would be under surveillance, and, for example, information about any potential visitor or contact would eventually be transferred through the information system to central authorities or even Europol. Even if this seems improbable, it is interesting that such a possibility has been funded by PHARE.

⁸⁰ Standard Project Fiche. Fight against crime II. Location: Poland. PL01.03.09 [online] http://ec.europa.eu/enlargement/fiche_projet/open_document_fp.cfm?do_id=28711; accessed 01/04/2005.

improvement of Police data transmission infrastructure and creation of conditions for setting up of national centres of Schengen Information System and Europol; extension of access to central database of Police National Information System, AFIS and the other IT Police databases (in particular DNA); acceleration of information transfer, including data sent to the criminal information centre and the Border Guard; creation of national network of computer crime counteracting posts and strengthening the structure within the Police responsible for the European integration process; improving efficiency in crime combat, including organised crime and drug trafficking through building of teletransmission networks in the area of most affected *voivodships* (regions). This project has the biggest budget of all discussed above – €9.1 million, of which €6.8 million from PHARE, and €2.3 million from national co-financing. The whole budget was investment and there was no trace of institution building. Thus the activities are listed as follows: carrying on tenders; purchase of equipment; distribution of purchased equipment between relevant police services; beginning of use of the equipment by officers of the Police.⁸¹

5.6. PHARE projects rationale and outcomes

The PHARE projects provide an example of the external dimension of the anti-organised crime policy of the European Union. In essence this policy involved the transfer or export of policies, know-how and equipment from existing to future member states. For some observers this is a variation of the policy of state-building – a concept developed in the 1970s which was re-interpreted in the post-Cold War era and used for reconstruction of post-conflict countries, usually where there had been a direct interference in the conflict by the West.⁸² In the case of the applicant countries this was not limited to the creation of legitimate and sustainable (i.e. strong) institutions for weak states but creating institutions required by a particular type of state, i.e. a future EU member-state. This policy is effectively a variation of state-building which can be described as ‘member-state’ building. According to the

⁸¹ *Ibid.*

⁸² In some cases such policy was seen as successful such as the post-colonial experience of British experts sent to build a democratic state. For a critique of the contemporary application of such policies see D. Chandler, ‘International State-Building: Beyond Conditionality, Beyond Sovereignty’ Guest Seminar, Royal Institute for International Relations (IRRI-KIIB), Brussels, 17 November 2005 [online] <http://www.wmin.ac.uk/ssh/pdf/CSDCHandlerInternationalState-Building180206.pdf> accessed 11/11/2008.

European Stability Initiative (an NGO) for example, conceptually member-state building consists of three elements: ‘an *administrative revolution*, a process of social and *economic convergence*, and a shift in the substance and processes of *democratic governance*’, whereby:

The administrative revolution begins with joint teams of national officials and European Commission staff gauging the country's laws, policies, and institutional structures against the 31 chapters of the *acquis communautaire* – the EU's legislation, policies, and standards. Adopting and implementing the *acquis* requires undertaking a comprehensive reassessment of the role of government, reforming old policies, and extending the state into new fields of activity. It entails reviewing the functions of government institutions, rationalizing existing structures, and creating new ones. It also involves drafting a great deal of new legislation to implement European norms and the rules of the single market. The Commission offers technical assistance, typically by pairing officials from EU member states with counterpart institutions in candidate countries. There is a rigorous annual review of progress, which is made public in a hard-hitting Commission report.⁸³

This was the policy rationale for the PHARE projects on organised crime, which have focused on the EU membership conditions in the area of JHA and the building of an EU anti-crime institutional network in which the new member states had to participate even before joining the Union. Moreover they went beyond simple law enforcement and touched areas where existing EU member states have preserved their national sovereignty, and particularly the legislative process and parliamentary control. The EU projects discussed in this chapter would go on to have direct consequences upon the adoption of anti-crime legislation, and the formulation of criminal justice policies in the recipient countries.⁸⁴ In practice, however, the

⁸³ European Stability Initiative (no date) Member state Building.

[online] <http://www.esiweb.org/index.php?lang=en&id=302>; accessed 11/11/2008 (italics in original).

⁸⁴ In the case of the project on Combating Money Laundering in Bulgaria, for example, which was implemented by the Spanish Institute for Fiscal Studies, a full assessment of the Bulgarian money laundering system was conducted and a number of the recommendations made by the project were

organised crime/JHA projects funded under PHARE and other programmes, have served to extend the geographical scope of the developing EU crime and security governance structure. This was done by direct influence on the applicant countries' criminal legislation, the restructuring of criminal justice institutions, and the creation of new agencies with vaguely defined responsibilities and powers and with weakened control from the national democratic institutions, i.e. parliamentary control. The transfer of expertise in the area of crime fighting, and the creation of links with member states or EU law enforcement structures has also served to reinforce a dependency on externally defined policies and priorities while undergoing a major institutional reform.⁸⁵

Although there are some positive evaluations of the policy transfer through Western/EU assistance in the criminal justice area,⁸⁶ most analyses of the policy, including official enquiries, tend to find faults though usually at a micro-policy level. The essence of an asymmetrical relationship is that what seems a small amount to one side may not be to the other. Equally the power imbalance allows for possible casual irrationalities that the weaker party has simply to accept. The twinning strategy, for example, proved to be problematic as it was difficult to coordinate the activities of different partners. A research paper on police training in Lithuania, for example, mentions an incident connected with a UK course on organised crime policing being delivered to a Lithuanian police audience – 'the audience was found to be quite knowledgeable on the subject, a similar course had been delivered by the French police a few weeks before the British course'.⁸⁷ The policy of providing equipment and training was found to be insufficient in some cases: The UK's

considered in the subsequent amendments of Bulgarian legislation, i.e. its Penal Code. Ministry of Finance, 'Pre-Accession Funds of the European Union. Successful Practices in Bulgaria' Ministry of Finance: Management of EU Funds Directorate [online] www.eufunds.bg/docs/ENG_brochure_01_curves.pdf accessed 08/11/2008.

⁸⁵ The state security and law enforcement services were one of the key institutions where post-totalitarian reform was of vital importance. The nature of this reform will not be discussed in detail here but it suffices to say that reform's aim was not only de-militarisation of these services but a much deeper change of image in order to 'reorient the police towards the public, in other words to aim to provide a police *service* in place of the authoritarian police *force* that has traditionally existed by developing new approaches to working with the public.' A. Robertson, 'Criminal Justice Policy Transfer to Post-Soviet States: Two Case Studies of Police Reform in Russia and Ukraine', *European Journal on Criminal Policy and Research*, 2005, vol.11, pp. 1–28.

⁸⁶ For example, T. Adams, 'US Assistance Programs in Europe: An Assessment.' Statement to the House International Relations Committee, Subcommittee on Europe, Washington, DC, 2004. [online] <http://www.state.gov/p/eur/rls/rm/2003/19203.htm> accessed 16/11/2008.

⁸⁷ F. Gregory, 2001, *op. cit.*

Foreign and Commonwealth Office acknowledged that in the case of South Eastern Europe (i.e. the Balkans), where the criminal justice structures are heavily under-resourced, the provision of equipment and training have not been sufficient because '[t]he experience of the last ten years has demonstrated that equipment is frequently underused and training makes little difference if they are not accompanied by thoroughgoing reforms of the law-enforcement bodies they are provided to.'⁸⁸ Furthermore, the document states that the coordination of these projects between the different partners and recipients had been poor and 'resulting in wasted efforts or gaps in coverage. Recipient states can help in the co-ordination of assistance, helping to target aid where it was likely to have the greatest impact. In essence the watchwords were 'capacity building'. This requires long-term projects, co-ordinated throughout the criminal justice sector, taking into account local factors, and backed with political will. These projects would, of course, include the provision of technical and training support. However the short-term provision of training and technology are unlikely to have an effect on their own.'⁸⁹ Experts were not always knowledgeable of local situations, and especially local legislation and institutional environment and therefore it was naïve to presume that some short term experts could do all the work in developing a whole conceptual, legislative and institutional change in a state's criminal justice systems.⁹⁰

The projects which had broader aims such as the provision of expertise and assistance with drafting measures and legislation were also problematic as they often clashed with local cultural-political or institutional problems. According to a study on Lithuanian experience with implementing a mix of foreign and domestic anti-corruption policies: '[F]rom the outside it looked like a chaotic process rather than a seriously grounded national policy.'⁹¹ The Action Programme of the Government of the Republic of Lithuania for 1997–2000 was officially approved but failed in implementation. A PHARE project aimed at facilitating the process suggested a set

⁸⁸ Central European & Eastern Adriatic Research Group, 'Organised Crime in Southeast Europe' Research and Analytical Papers, Foreign and Commonwealth Office, London, 2002 [online] http://www.southeasteurope.org/documents/SoutheastEurope_Nov02.pdf accessed 16/11/2008.

⁸⁹ *Ibid.*

⁹⁰ For a wider development of this argument in the context of transition see J.Wedel, *Collision and Collusion. The Strange Case of Western Aid to Eastern Europe*, Basingstoke: Palgrave MacMillan, 1998.

⁹¹ A. Dobryninas, 'Lithuania's Anti-Corruption Policy: Between the 'West' and the 'East'?' *European Journal on Criminal Policy and Research*, 2005, vol.11, pp. 77–95, p. 80.

of measures but the plan was never realized.⁹² Adrian Beck's extensive research on international assistance for police reform in transition countries also concludes that it is a common policy pitfall to assume 'that good policing practice from 'donor' countries in the West can easily be transplanted to 'recipient' countries in need of development'.⁹³ This is also valid for other EU policy transfer and this has become a research area which exposes not a process of EU-aided building of democracy but can also be argued to additionally export a democratic deficit to applicant and other aid-recipient countries.⁹⁴

Research conducted by a team of British academics on the impact of the EU requirements in the area of JHA on some of the applicant countries (the Baltic states) supports the argument of this chapter and its micro-analysis of representative project fiches that the outcomes of this policy on the ground were ambiguous. First, the lack of a clear and unified definition of organised crime, coupled with the lack of organised crime legislation in the applicant countries led to very chaotic institutional policy:

Responding to the demands of the JHA *acquis*, and more specifically the Pre-Accession Pact on Organised Crime, law enforcement reforms have attempted to 'make sense of' the largely ambiguous perceptions of organised crime by creating units which reflect the 'meaning' of this term. Hence, the creation in one country of an organised crime and corruption unit, a drugs unit, a contraband department, and so on, all

⁹² The author concludes that 'such a mechanical model for implementation of 'best practice' of western states was inevitably facing problems', which was a view shared by international experts monitoring the country's policy, as cited in the article: 'that merely transposing a subset of solutions developed in advanced market democracies may not be very effective in States in transition – particularly where the solutions themselves are the subject of controversy even in the West [...] These considerations lead to further questions concerning whether standards for measuring and combating corruption should be entirely universal in transition States, or whether under certain situations it is necessary or even productive to tolerate practices that would be found unacceptable or illegal in consolidated democracies.' A. Dobryninas, 2005, *op.cit.*, p. 83.

⁹³ A. Beck *et. al.*, 2003, *op.cit.*, p. 1; also A. Beck, 'Crime and policing in transition: Providing appropriate international assistance' in M. Shaw ed., *Crime and Policing in Transitional Societies*, Seminar Report, no. 8., Johannesburg: Konrad-Adenauer-Stiftung, 2001. Such problems have sometimes led to changes in the security sector reform practices - see for example the report on how to conduct a police reform. D. Bayley, 2001, *op.cit.*

⁹⁴ For example, M. Williams, 'Exporting the Democratic Deficit. Hungary's experience with EU integration' *Problems of Post-Communism*, January/February 2001, vol.48, no.1, pp.27-38.

within the state police, while establishing a separate anticorruption division which deals with all aspects of private and public corruption.⁹⁵

The research showed that the recipients were appreciative of PHARE help in adopting the JHA *acquis* but expressed ‘criticism of certain shortcomings of some of these initiatives, such as the duplication of training programmes, a culture of short-termism and an inability by member states to appreciate the problems newly democratic countries face in the establishment of good governance’. As far as the financial side was concerned, the applicants had to make ‘difficult choices for management between resourcing crime reduction at a national level and satisfying those parts of the JHA *acquis* which provide for international-based policing. The burden of administration that some of these programmes engendered prompted one official to claim that it was almost as detrimental to good policing as was the dictatorial interference of the Soviet system.’⁹⁶ The overall conclusion from the report is that the experience of the applicant countries with the anti-crime projects financed by the EU is highly controversial and has not resolved some very problematic areas and especially intra-institutional issues, and has led to duplication of efforts and poor coordination of the work of relevant authorities. The report’s final recommendation expresses concern over the actual relevance of some of the work performed under these projects: ‘The ability to develop further a ‘structured dialogue’ in JHA matters depends on a clearer understanding of the *actual* rather than imagined problems facing the Accession states like the Baltics in matters of soft

⁹⁵ M.P. Rawlinson, *Crime, Borders and Law Enforcement: A European 'Dialogue' for Improving Security* Full research Report for One Europe or Several? The Dynamics of Change Across Europe Programme, 2005 [online]

<http://www.esrcsocietytoday.ac.uk/esrcinfocentre/viewawardpage.aspx?awardnumber=L213252013> accessed 22/04/2009. Furthermore, the change of emphasis on organised crime albeit poorly defined has led to further complications in the implementation of the penal law. The applicants’ previous legislation included measures against conspiracies or crimes committed by a group of individuals which had to be dropped in favour of the new term ‘organised crime’, which was more difficult to use in development of anti-crime policy. Furthermore, ‘the strategies involved in intelligence-led policing, such as the use of informants, technological apparatus, e.g. wiretaps, most commonly used in the investigation and detection of organised crime, are politically sensitive in these emergent democracies where the memory of totalitarian control, which routinely employed such systems, remains acutely fresh.’ *Ibid.*

⁹⁶ The report mentions ‘a ‘twinning’ project related to money laundering between the UK and a Baltic State that took two years to negotiate (1998-2000) and consequently had only just started. Its impact would not be evident for some years... Moreover, the research provided further evidence that when EU policies towards the Accession states depended upon the use of expertise, such as in the area of organised crime, from the member states, these tapped already scarce resources so that, for example, the UK law enforcement services could not themselves respond to all the requests for help made to them.

security, domestic policing, etc. This in turn requires a more flexible approach to integration which, while not directly threatening security, is prepared to be more realistic about the targets set within the JHA *acquis*.⁹⁷

5.7. Conclusion

This chapter exposed some of the practical problems linked to the external application of the developing anti-organised crime policy within the EU. As the external dimension of this policy gained momentum in the late 1990s its inclusion in the EU's relations with third states became a key priority in both JHA's policy area but also in the development of a unique EU foreign policy based on normative principles and concerns with the new security threats such as organised crime. However the issue of crime has been rationalised in EU foreign policy as emanating from poorer and weaker states, and especially the post-communist states in Eastern Europe. The previous fear of communism was now replaced by fear of post-communist crime, corruption and 'state capture' and in these highly alarming conditions the European Union included its Justice and Home Affairs agenda in its dealings with risk countries.

The development of this external dimension proved to be highly problematic. First of all, it displayed the lack of ability of the Union to spell out a clear policy in this area. As crime fighting is traditionally an internal policy matter, its external side is bound to meet a number of problems and inconsistencies. In the cases discussed in this chapter, it is not clear whether the EU developed this policy as an extension of its own internal security policy, or because of concern over the good governance issues in third states, as maintained in official statements and policy documents. Therefore the guiding principles of the policy were confusing and a subject of constant amendments and re-adjustments. Yet these ambiguous policies were spread beyond the EU borders and affected applicants' internal governance structures. This was done by using a number of more or less coercive policy instruments, which, considering the power imbalance and strict membership conditionality, left very little room for manoeuvre for the applicants. On a practical level, the applicants simply

⁹⁷ *Ibid.*

imported anti-crime concepts and policies with some local variations to fit internal agendas and perhaps adjust unworkable strategies.

The specific discussion of examples of PHARE anti-crime projects throws light on the nature of these policies in some detail. First, the projects demonstrate that this policy was taking place in the absence of any real standards and common EU policy for fighting crime which could then be successfully transplanted to any potential new member. The core nature of EU policy was the export of individual or institutional expertise from EU member states, as well as EU-made equipment for crime fighting without prior research of the needs and the criminological situation of the recipient state. On the whole, the PHARE programme was poorly coordinated and this led to some inconsistencies and suspicions over EU expenditures. From the point of view of the recipients, the projects were developed on an individual basis and supposedly reflected individual problems of the country concerned but these problems were actually linked to the wider needs to comply with EU conditions and adopt the EU *acquis*.

This policy transfer has had some ambiguous outcomes for the applicant countries. Apart from the administrative problems which accompany any new policy, in the case of organised crime the change of policy did not always show tangible results and perhaps could not because of the problematic assumptions about organised crime in the first place. But failure would create additional pressures and deepen the internal political problems in fragile democracies. The EU policy was not concerned with individual conditions and the one-size fits all policy of fighting organised crime, despite being presented as capacity building, actually risked weakening institutional capacities where it might be argued to matter more. The applicant state and its institutions started to be increasingly reliant on external agendas and donors in developing a populist anti-organised crime policy rather than connecting with its citizens in a way that could deal with the problems experienced on a daily basis.

Chapter 6. Bulgaria: Post-communism and Organised Crime

6.1. Introduction

The previous chapters discussed how organised crime became an issue of increasing international concern, particularly for the EU and its relations with third countries. The fight against organised crime was an area of conditionality for the 2004 enlargement of the EU. In the case of the Balkans, it became even more important as the region was perceived as institutionally weaker and prone to the spread of crime and corruption. In the Western Balkans organised crime was linked to the issue of civil war and effective *lack* of a state, and in the rest of the region it was linked to an *insufficient* state to guarantee the rule of law and democracy. This chapter looks at the significance of this view from the perspective of Bulgaria as a Balkan applicant country which did not have a major political problem in the transition but became a focus of the international anti-crime agenda. The chapter explores the conditions under which Bulgarian political elites adopted this agenda and linked it to the internal reform process. The discussion builds on the findings of the previous chapter concerning the key role of EU funds and experts in shaping the candidate countries' policy on crime but takes a different angle and presents the arguments about organised crime as perceived by the Bulgarian actors. Thus the chapter forms a first part of the analysis of organised crime in the Bulgarian accession to the EU, which concludes in the next chapter. The main aim of the analysis of Bulgaria's case is to test whether the fight against crime help did contribute to the building of democracy and the rule of law through assisting in the strengthening of the state institutions.

The chapter is organised around the development of the concept of 'organised crime' in the country and the way the issue was addressed in Bulgarian politics during the early and later stages of post-communist transition.¹ The evolution of Bulgaria's anti-crime policy in the post-communist period can be divided into two major phases which are reflected in the structure of the chapter. The first one is between the fall of

¹ As 'transition' is a contested paradigm in post-communist literature, it is used here as a broader term for modernisation, and the late twentieth century version of 'Europeanisation', or adoption of Western norms ('Westernisation'). Eastern European public discourse usually takes the point of EU accession as the end of transition.

the communist regime in 1989 and the major economic crisis in 1997 which brought a more reformist pro-Western government. The second period is between 1997 and 2007, the date of EU accession although crime remained an issue after Bulgaria became an EU member. From 1997 organised crime became one of the political priorities of the new government which also coincided with intensified EU pressure to develop anti-organised crime policies after the adoption of the pact on organised crime with the applicant states, discussed in previous chapters. In this period the anti-crime policies were strongly influenced by the EU and the need to comply with membership requirements but Bulgaria displayed an extreme politicisation of organised crime compared to other applicants, and the issue spilled out to other areas of reform. Within this period we can distinguish three stages: 1997-2001 when the reformist government of the Union of Democratic Forces (UDF) laid the basis of the anti-organised crime policy; 2001-2004 when a new government conducted pre-enlargement negotiations on Chapter 24 on Justice and Home Affairs (which went on from 2001 to 2003) and successfully closed the chapter but was not allowed to join due to unsatisfactory fight against organised crime; and, 2004-2007 when the state had to engage in an extensive anti-crime campaign to be accepted as a full member of the European Union on 1 January 2007. The chapter uses a number of different sources to re-construct these developments such as official documents and strategies issued by the Bulgarian governmental agencies and ministries, reports in the media, NGOs and other agencies, online blogs, and official opinions. These sources reflect the complex interplay of multiple internal and external factors which had an impact on the anti-crime policies and expanded or limited implementation.

6.2. Crime in Bulgaria: perceptions and statistics

In November, 1989 Bulgaria emerged from a 45-year communist rule which had been established with the help of the Russian forces at the end of the World War II. The end of the regime came with a ‘velvet revolution’ which was initially limited to a low-key transfer of power within the top echelons of the ruling Communist Party. However the shift of power at the top triggered some public unrest and the party had to call for the first democratic elections in June 1990, which it won after undertaking minor changes and re-branding itself as the Bulgarian Socialist Party (BSP). The BSP, commonly referred to as ‘the former communists’ stayed in power until 1992

when a newly formed Union of Democratic Forces took power and initiated a policy of mass privatisation of land and industry. This policy was chaotic and ultimately unpopular as it did not bring relief from the deepening economic crisis. The public dissatisfaction with the UDF's policies restored the BSP back into power in 1995 but this government, too, failed to handle the situation and win international support, losing in a dramatic fashion only two years later to a reformed and strengthened UDF under the new leadership of the former finance minister Ivan Kostov. In summary, the first seven years of Bulgarian post-communism was a period of unsettled political sentiments and a gradual formation of a two-party political system out of the chaos of legitimacy and the hundreds of minor parties and political entrepreneurs which had sprung up between 1990 and 1991. The state did not spiral into civil conflict apart from some more intense anti-government demonstrations, and the political demands of different groups were successfully managed.² However, the crisis of the state created a wide-spread perception of top-to-bottom lawlessness in the country, and public frustration was expressed through a new moral discourse of crime and corruption.³

In the period after the fall of communism there was the perception of a growing post-communist crime problem in Bulgaria and, as the previous chapter identified, this was common for all post-communist countries. Official data from Eastern Europe supports the view that crime was on the rise but post-communist states showed very different intensity of their crime rise. According to some sources Bulgaria had a particularly sharp rise of about 300% of crime during the 1990s.⁴ However, the rise of crime in the post-communist period needs some further clarification. First, there is a scarcity of data on crime during communism, and the available information points

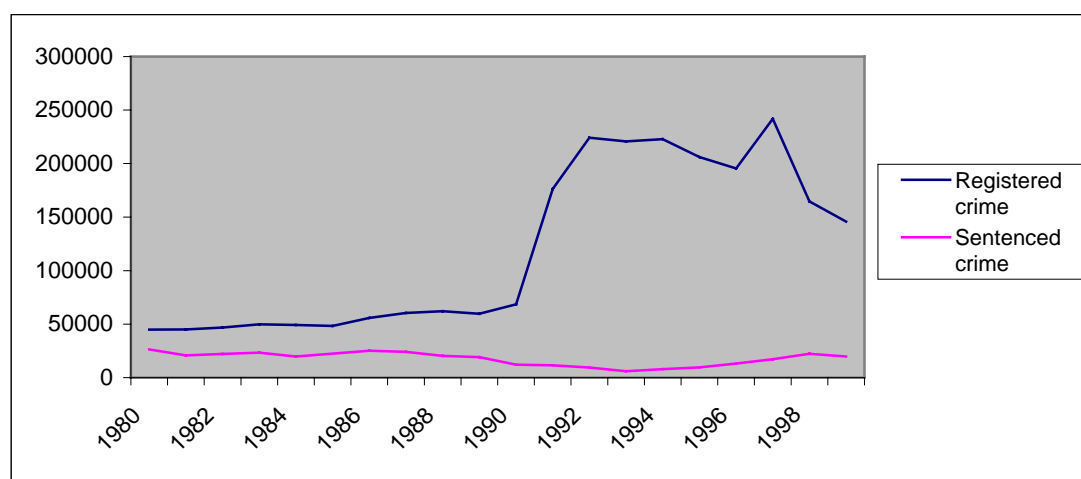
² For example, Bulgaria allowed the establishment and equal political participation of one of the most successful ethnic parties in Eastern Europe, the Movement for Rights and Freedoms (MRF), which represented the large Turkish minority in the country. MRF later transformed into an ethnic-agricultural party reflecting the interests of the elites of Turkish minority who had developed successful agricultural businesses. The MRF was often used as leverage in political coalitions and was effectively the most stable third party in Bulgaria's political system dominated by continuously morphing liberals and socialists.

³ According to Ivan Krastev, the politicization of the issue of corruption in Bulgaria was triggered by political (and external) prioritization of anti-corruption policies but to Bulgarian voters it was a form of critique of the growing social stratification. See I. Krastev, *Shifting Obsessions: Three Essays on the Politics of Anti-corruption*, Central European University Press, 2004.

⁴ N. Genov, 'Managing Transformations in Eastern Europe' in *Regional and Global Development*, UNESCO MOST Paris, Sofia, 1999, p.95.

at a rise in crime *before* the fall of communism.⁵ Secondly, the official statistics on crime in Bulgaria are not a reliable basis of comparison of crime before and after 1989, or the level of crime in general. Data published by the Bulgarian authorities shows two trends displayed in Figure 6.1. and Table 6.1. First, the levels of *registered* crime had soared in the 1990s but then declined while the number of *sentenced* crimes dropped in the period between the 1980s and 1996-7 before reaching higher levels than in 1989. Within that period the rise in crime had two major leaps – in 1991 and 1997. The two data lines reflect the problem of the criminal justice system which was unable to respond to the huge rise of crime, and some methodological issues of crime recording which had led to inflation of recorded crime.

Figure 6.1. Crime trends in Bulgaria ⁶



⁵ According to Ana Mantarova, the average level of crime in Bulgaria between 1980 and 1989 was around 567.5 recorded crimes per 100 000 inhabitants (502 in 1980 to 663 in 1989), and the first major increase of recorded crime was in 1985. А. Мантарова, *Престъпност и социална трансформация* (Crime and Social Transformation), Институт по Социология, БАН, 2000. The validity of the crime figures are questioned by Nikolay Genov: 'the precision of registration and reporting crimes by the police, since this institution underwent substantial changes as well'. N. Genov, 1999, *op.cit.*

⁶ Based on data from the Bulgarian Prosecution Service. Анализ на регистрираната и наказаната престъпност през 1999 (Analysis of registered and sentenced crime in 1999), София: Съвет за криминологични изследвания към върховна касационна прокуратура на Р.България, 2000.

Table 6.1. Number of criminal cases which have ended with a conviction ⁷

| Year | Number of criminal cases |
|------|--------------------------|
| 1989 | 20720 |
| 1990 | 13201 |
| 1991 | 12568 |
| 1992 | 10031 |
| 1993 | 6535 |
| 1994 | 8670 |
| 1995 | 10327 |
| 1996 | 14349 |
| 1997 | 18066 |
| 1998 | 23136 |
| 1999 | 24954 |
| 2000 | 26986 |
| 2001 | 28322 |
| 2002 | 28395 |
| 2003 | 29177 |
| 2004 | 31831 |

The official statistics also experienced a number of changes of methodology during the 1990s which coincides with the leaps and decline in recorded crime.⁸ Furthermore the criminal legislation introduced new forms of crime, reflecting either political imperatives such as organised crime, or changes in the criminological conditions, which also changed the crime figures and which complicates a comparative analysis of crime before and after 1989.⁹ The official statistics, for example, reflect a decline in state embezzlement and a rise in property crime, which

⁷ Based on data from the Bulgarian National Statistical Institute. Национален Статистически Институт, *Престъпления и осъдени лица* (Crime and Convicted Persons Report), 2005, Appendix 2. [online] <http://www.nsi.bg/ZActual/New-convict.htm> accessed 22/03/2008.

⁸ The first change was in 1991. The system before that would not include crimes which had not passed through prosecutor or examining magistrate's monitoring, i.e. cases which had not been approved for further investigation. The new system adopted in 1991 began to include all complaints made by citizens and detected crimes, all of which would be reflected in the crime statistics although some of them would not undergo investigation due to lack of evidence. Престъпността в Република България през 1996: Криминологически анализ на статистически данни (Crime in Republic of Bulgaria: Criminological Analysis of statistical data), София: СКИ при ГП на Р. България, 1997. According to Mantarova, more changes in the recording system were introduced in 1998 and 1999. A. Mantarova, 2000, *op.cit.* p.38.

⁹ In 1989 there were 866 sentenced cases of embezzlement, which dropped to 457 in 1990 and even down to 61 in 1993 but stabilized around 200-250 for the period 1989-2004; white-collar crime has also dropped from 380 in 1989 to 42 in 2004. At the same time the number of robberies in 1989 was 292, which rose to 959 by 2004, and larceny rose from 5359 to 9971 in the same period. Национален Статистически Институт, 2005, *op.cit.*

can be explained with the new economic conditions. Many state enterprises had gone bankrupt, whereas the population started to acquire movable property from the expanding consumer market, which became subject to theft.¹⁰ Even during communism, and especially the 1980s, Bulgaria had illegal and semi-legal markets for goods and services – something typical for all communist states, due to the limited supply of consumer goods and the restrictions over private business activities. These markets were serviced by a contingent of professional criminals but their small size did not lead to the development of a large underworld such as the Russian *vor-v-zakone*.¹¹ Despite appearing as a safe country with low levels of crime, Bulgaria's population was still conscious of everyday crime risks such a pick-pocketing by some gypsy tribes who made living out stealing and begging, along with performing their low paid jobs.

In the 1990s crime in Bulgaria, however, showed a sharp change as a wider percentage of the population became victimised.¹² The fear of crime also came to have a new and specific moral connotation with a condemnation of the state as an actor as the rise in the number of crimes and victims happened in conditions of economic crisis which combined with a reduced social role for the state compared to the communist period.¹³ The crime statistics which subsequently marked a steady decline after 1997 were then met with scepticism by the public.¹⁴ The levels of

¹⁰ On the other hand, the murder rate did not experience major changes.

¹¹ J. Nikolov, 'Crime and Corruption after Communism – Organized Crime in Bulgaria', *East European Constitutional Review*, 1997, vol.6, no.4. 'Vor-v-zakone' is the Russian for 'thieves-in-law' – a contingent of professional criminals which developed in the Soviet conditions of scarcity and state control of economy and society. Some of them operated on the black market, which helped with everyday survival of sections of the population, and especially during the period of communist (and economic) demise in the 1980s.

¹² The rise of level of recorded crime in Bulgaria in the 1990s can be compared to the general European trend. The average rise in Europe for the period 1996-2000 was 1% with the largest increase in Belgium (17%), Austria (15%), Portugal (13%) and the Netherlands (9%). In fact, for the same period crime in Bulgaria dropped by the highest level in Europe – by 31%. According to data published by Centre for the Study of Democracy in its National Crime Survey for the period 2000-2005: 'Bulgaria's crime rate remains slightly lower than the average rate for European countries. Over the past five years, the country's prevalence rate has fallen by nearly 4 percentage points—from 17.5% in 2001 to 12.9% in 2004'. Crime Trends in Bulgaria 2000-2005, *op.cit.*

¹³ The state spending on social policies was significantly reduced, which affected important areas such education, public health provision, and financial support for the rising numbers of unemployed people made redundant by bankrupt state enterprises. The cuts in social spending were a result of policies of control over the state budget used in post-communist Europe during transition and advised by the international financial institutions.

¹⁴ This drastic drop of recorded crime in 1998 could also be a direct effect of the change of the recording system (now excluding cases whose initial assessment has not been completed), or manipulation by the police.

recorded crime continued to drop and in 2007 the Director of the Bulgarian Police Valentin Petrov announced that crime levels now matched those prior to 1990 – a statement criticised in online forums of legal professionals.¹⁵ The problem of the rising fear of crime was further exacerbated by the emergence of a crime reporting commercial media which replaced communist low-crime state propaganda.¹⁶ The media effect was not only local but international as the foreign media began reporting on post-communist chaos and crime, which was widely publicised in the country as well. One of the first cases was a 1995 *New York Times* article about the so-called ‘wrestlers’ associations (private security companies formed by former policemen and athletes, which used racketeering methods) and their grip on the country.¹⁷ However, the media and public opinion in Bulgaria reflected the politicisation of crime in a new ‘law and order’ politics in conditions of liberalised party competition. Both of the major political parties in the 1990s engaged in a crime discourse though with a different emphasis. For the Bulgarian socialist party crime is traditionally linked to social issues and the party discussed the problem from an anti-market and communitarian perspective.¹⁸ The liberal Union of the Democratic Forces however focused not so much on general crime but on organised crime which it saw as impediment to the market and democracy. Furthermore the UDF linked the issue of organised crime with the communist state and the former communists who were still in charge of the country. In its political debates, statements and publications the UDF gradually constructed the idea of the criminal state.¹⁹

¹⁵ For example, ‘Ако има миша дупка, дайте я насам’ (If you have a mouse hole, pass it on.), Lex.bg – Българският правен портал. *Lex новини* | *Lex.bg* [online] <http://lex.bg/news.php?lang=bg&id=11740>: accessed 22/03/2008.

¹⁶ See M. Łoś, ‘Post-communist fear of crime and the commercialization of security’, *Theoretical Criminology*, 2002, vol. 6, no. 2, pp. 165–188, and V. Popov, *The Relationship Between Mass Media and Organised Crime in Post-Soviet Russia: A Sociological Perspective*, Unpublished PhD thesis. City University, 2005.

¹⁷ See J. Perlez, ‘Sofia Journal; Rogue ‘Wrestlers’ Have an Armlock on Bulgaria’, *New York Times* (US), 12 January 1995.

¹⁸ I. Krastev, ‘Party Structure and Party Perspectives in Bulgaria’, *Journal of Communist Studies and Transition Politics*, vol. 13, no. 1, March 1997, pp.91-106.

¹⁹ This link between crime and the state is common for the post-communist discourse. For Karstedt, for example, crime was first created by communism and its culture of inequality (a so-called ‘hour-class’ society of rich nomenclature and homogenised masses), which then transformed into a wave of elite and violent crime. She explains the stark contrast between post-communist states with apparently high and low crime problems as a result of establishing strong institutions, i.e. the ‘success stories’ of the Central European states compared to the former Soviet republics was due to strength of institutions, based on civil rights and rule of law. S. Karstedt, ‘Legacies of a culture of inequality: The Janus face of crime in post-communist societies’, *Crime, Law and Social Change*, 2003, vol. 40, no. 2/3, p.295-320.

6.3. Defining post-communist organised crime in Bulgaria

Organised crime made its entry into Bulgarian politics via a crime discourse led by the new-right opposition in Bulgaria but it built on an existing external criticism of the Bulgarian state's criminal connections during communism.²⁰ This criticism was also popular amongst the Bulgarian intellectuals many of whom joined the anti-communist liberal parties (most of which were part of the UDF) after the 1990s and turned the criticism into political platforms. The discussion which follows is a review of a sample of articles in the UDF's newspaper *Demokracia* for the period of 5 months in 1995.²¹ This period was marked by an increasing number of articles dedicated to the problem of crime, and especially organised crime and the 'new mafia'.

By 1995 *Demokracia* had started to politicise crime and attempted to build a public consensus on the link between crime-government and the governed. An article published on the day after New Year's day, 1995, stated that 'corruption is amongst the most dangerous crimes of the year [1994].. [t]ogether with organised crime, corruption destroys the foundations of the state, according to 78% of Bulgarian citizens'.²² *Demokracia* also launched an attack on the BSP's newspaper *Duma* and

²⁰ The negative image of Bulgaria then came mainly from the highly publicised murder of the émigré Bulgarian journalist Georgi Markov in 1978 in London with a poisonous dart fired from a gun concealed in an umbrella. This was followed by the alleged Bulgarian link to Pope John Paul's attempted assassination in 1981, and more recently, the exposure of the Bulgarian involvement in the global drug and arms trade during the Cold War. The latter was popularised by Clair Sterling's book on global organised crime *The Mafia* published in 1990. C. Sterling, *The Mafia*. HarperCollins Publishers: London, 1990, p. 332-323. Sterling claimed that the Bulgarian secret services were implicated in the heroin trade to Western Europe, some of which was then exported to the USA. However, the participation of state secret services in the drugs trade was a practice for both communist and Western states. The Cold War adversaries however had little sympathy for issues of organisation and control and selectively approached some countries' involvement in more universally sanctioned illegal practices, so that Bulgaria was presented in the West as an evil criminal communist state. During the 1990s Bulgaria hit the headlines for illegal arms trading which involved the privatised successors of the state company Kintex which was selling arms to some Third World countries during communism. *Bulgaria – Money Talks: Arms Dealing with Human Rights Abusers* [online] www.hrw.org/reports/1999/bulgaria; accessed 14/02/2008.

²¹ This review covers January, February, October, November, December 1995. As UDF were in opposition during 1995 they were particularly eager to use the issue of crime to attack their BSP. All quotations are the author's own translation from Bulgarian.

²² 'През 1994 надминахме Гватемала по бедност и корупция' (In 1994, we surpassed Guatemala in poverty and crime). *Демокрация*, no. 1, 2, 01/1995, p. 4. According to the article, this is the conclusion of an MDMB (Institute for Marketing and Social Research based in Sofia) sociological study.

its editor for not publishing the figures of corruption and organised crime.²³ This criticism was made with reference to the *New York Times* piece about the ‘wrestlers’ associations. What the *Demokracia* chose to emphasise from the *New York Times*’s article was its reference to the former interim Prime Minister Reneta Indzhova’s statement that: ‘when it comes to attacking organized crime, we have not succeeded in breaking the bond between the state and mafia structures’.²⁴ This theme was further reinforced in more articles in the same week including, an interview with Renta Indzhova where she claimed that the party (BSP) is ‘genetically linked with organised crime’ and therefore cannot fight it and the insistence that there is a ‘marriage bond’ between Berov’s government and organised crime, in another article in the same issue of the paper.²⁵

Demokracia’s organised crime critique was extended to the future, as it attacked the political programme of the new BSP government of Zhan Videnov (which came into power on 25th January). According to *Demokracia*, the programme advantaged financial groups, part of which are ‘semi-financial – semi-criminal’ and as a result these groups ‘will grow, new parallel groups will emerge and this will expand the territory of organised crime.’ The latter were said to have been ‘flirting’ with the government in order to take positions in the country’s economic life.²⁶ Only a couple of weeks later, another article in *Demokracia* described the country as *already* taken over by organised crime and declared a UDF anti-crime stance:

A wave of terrorism and violence is flooding Bulgaria... People live in constant fear of mugging, kidnapping, beating, rape, murder... Using the weakness of state institutions and widespread corruption, organised crime becomes more and more powerful, its actions – more brutal, it merges with the state and threatens the latter’s future. With crime like that,

²³ ‘Думи за корупция’ (Words of corruption), *Демокрация*, Issue 15, 18 01/1995, p.3.

²⁴ *Ibid.*

²⁵ Партията генетично свързана с организираната престъпност. Интервю с Ренета Инджова. (The party is genetically linked with organised crime. Interview with Reneta Injova, *Демокрация*, no. 22, 26/01/1995, p.1, and Брак между Беров и Мултигруп е имало (There has been a marriage bond between Berov and Multigup), *Демокрация*, no. 22, 26/01/1995, p. 3. The article claims a previous government had given in to some of the demands of the financial groups (such as Multigroup), which are viewed as organised crime groups in the country.

²⁶ ‘Хаотичната програма Виденов ще обслужи съмнителни групировки’ (The chaotic programme of Videnov will serve the shady groupings) *Демокрация*, no. 24, 28/01/1995. The article expressed the views of Ivan Kostov, a former financial minister and future prime minister of Bulgaria.

Bulgaria cannot develop normally and have an international standing. We insist that the state institutions responsible for law and order in the country make efforts for the quick investigation and severe punishment of criminals. The ruling BSP and its government must take immediate action to stop the crime wave [...] and present in the Parliament a programme for securing the life, dignity and property of the citizens. The UDF is decisively for order and security within the limits of law in Bulgaria!²⁷

Some in the UDF developed ideas of how to tackle organised crime and particularly the harm it caused to the economy. In the words of Zhelyu Zhelev, who was then the President of Bulgaria from the UDF (1990-1997), privatisation of state assets would stop the mafia as ‘the classic formula for the thriving of organised crime is state property – private exploitation, which is why only privatisation would restrain the mafia.’²⁸ Another article interpreted organised crime from a different angle and claimed that the criminals performed ‘a natural selection which coincided with the [Communist] party line’ in that they attacked mainly small-scale business entrepreneurs who lost from the racketeering - because of this they were, a ‘red mafia’.²⁹ Furthermore, another article published in the same month argued that, as a result of the ‘wrong privatisation’, Bulgaria was being subjected to a dualistic rule of organised crime, the mafia and corruption, in alliance with the ‘red barons’, businessmen and bankers.³⁰ Another article argued that the mafia was directly involved in the legislative process and that it lobbied for legislation against small business.³¹ And in response to all that:

²⁷ ‘Организираната престъпност става все по-брутална’ (Organised crime gets more and more brutal), *Демокрация*, no. 36, 11/02/1995.

²⁸ ‘Приватизацията ще спре мафията’ (Privatisation will stop the mafia), *Демокрация*, no. 37, 13/02/1995. This statement refers to the development of a peculiar type of ‘enclosure’ of state-owned enterprises. This was done by (or with the help of) the managers of the companies who set up private firms to either sell supplies at overblown prices to the state company, or buy its produce at a minimal price, or both at the same time. In this way the state company was left with loss and the private companies accumulated profit. Similar schemes were allegedly used for draining state finances via private banks. See J. Nikolov, 1997, *op.cit.* The extent of this practice is, however, unknown.

²⁹ Престъпността стана основно средство за рекомунизация (Crime became the main tool for re-communisation), *Демокрация*, no.230, 2/10/1995, p. 3. The ‘Red mafia’ is understood to be destroying private entrepreneurship in an anti-capitalist fashion.

³⁰ Рубрика ‘Мнения’ ‘Да внимават консулите’ (Rubric ‘Opinions’. The Consuls should be vigilant), *Демокрация*, no. 231, 3/10/1995, p.3.

³¹ ‘Мафията се консолидира в последния рунд за разграбването на страната ни Issue’ (The mafia is consolidating for the last round of ripping off of the country), no. 277, 25/11/ 1995, p.1.

The government are only complaining and observing apathetically the lawlessness... They occasionally utter a toothless warning to the criminals. They say nothing about the massive misappropriations, or they are silenced with bribes. The state is ruled by parasitic mafia groupings and their armed bodyguards and racketeers... The economy has to be freed from the control of the bureaucracy and the conviction that every private entrepreneur is a thief, and every bureaucrat is honest... We need to open the doors for real, serious foreign investment, and not for speculative capital of foreign mafias, linked to ours... There should be a free, spontaneous settlement of social relations... The syndicates need to be independent and democratically organised... The credit system needs to be protected from any political or mafia influences. This will weaken the bureaucracy and will remove the parasitic mafia monopolies... The society will be relieved from the bureaucratic tyranny and racketeering terror. UDF is the political force that can promise to do that.³²

For the UDF's party newspaper and party activists organised crime was to be found in every sector of the economy but particularly in the privatisation deals and the emergence of new private owners with the help of the state. Peter Dertliev, the leader of The Bulgarian Social Democratic Party (which was a member of UDF) put this in the most dramatic way: 'organised crime has now taken over the state and party structures [...] the tentacles of the Octopus are everywhere [...] and the government cannot deal with this octopus.'³³

The politicisation of organised crime was a combined result of the Europeanisation process and the needs of party politics. Europeanisation theory holds that reformist liberal parties in Eastern Europe will internalise Western values, which seems to be the case with the UDF and the issue of organised crime.³⁴ However, the UDF

³² Защо не гласуват хората? (Why the people won't vote?), *Демокрация*, no. 274, 22/11/1995, p. 3.

³³ 'Пипалата на октопода са плъзнали навсякъде' (The tentacles of the octopus have spread everywhere), *Демокрация*, no. 290, 11/12/1995, p.3. The reference to octopus here is inspired by the Italian TV drama 'The Octopus' about the Italian fight against the Mafia which was shown on Bulgarian TV and was very popular with the viewers.

³⁴ See for example F. Schimmelfennig, 'Strategic calculation and international socialization: Membership incentives, party constellations, and sustained compliance in Central and Eastern

developed its own interpretation of the problem. Between 1990 and 1997 UDF gradually linked reformist and populist ideologies, and moved from liberal to more statist values. According to Ivan Krastev, in the case of Bulgaria political representation on the basis of socio-economic interests did not exist in the first years of transition due to the fact that 90 per cent of the property in the country was state-owned and such interests could not exist. Krastev interprets party formation in Bulgaria as elite-driven and based on ‘cultural-ideological cleavages’, a process typical for other post-communist transitions. Krastev refers to Carl Schmidt’s friend-or-foe notion of politics to explain Bulgarian politics in transition as ‘conceived in terms not of a deliberate negotiation between competing interests but of a non-negotiable war of existential choices’.³⁵ In Bulgaria, these cleavages or existential choices formed around a red (communist, anti-fascist) BSP culture and the blue (anti-communist, anti-repression) UDF culture. Thus politicisation of ‘crime and the mafia’ in Bulgaria during the first 7-years became one of the central issues in UDF’s narratives in the process of its consolidation as a political party. As a side effect of this prioritisation of organised crime and the policies developed by UDF after 1997 the dominant interpretations of crime moved away from the social and closer to the political which treated crime as an existential security issue.

The liberals’ views on the problem of organised crime spilled over into the public debate on the issue. For example, Jovo Nikolov, an investigative journalist for the newspaper *Capital*, and one of the few ‘experts’ on Bulgarian organised crime elaborated on the problem in a similar way:

How should we think of organized crime in today’s Bulgaria? First of all, it has no centuries-old tradition like the Italian Mafia. Neither are its origins traceable to the traditional Russian system of the ‘thief-[in]-the-law’ (*vor-v-zakone*), which persisted throughout the entire Soviet period. It does not have the ethnic flavour common to the Chechen and Georgian mafias, nor is it structured around kinship networks, as is Albanian

Europe’, *International Organization*, 2005 vol. 59, no.4, pp. 827–860 and M. Vachudová, *Europe Undivided: Democracy, Leverage and Integration After Communism*, Oxford University Press, 2005.

³⁵ I. Krastev, 1997, *op.cit.*

organized crime. What is special about organized crime in Bulgaria is the way it was created by the transitional state.³⁶

Nikolov's weekly reports for *Capital*, and the reports of the NGO Centre for the Study of Democracy (CDS) in Sofia are the major sources on the problem of organised crime in Bulgaria. They link organised crime with the spread of post-communist illegal practices such as smuggling (linked to the embargo imposed on neighbouring Yugoslavia), car theft and car trafficking (from Europe), drug trafficking (and privatisation of drug channels from state security services), the emergence of the wrestlers' racketeering groups, and the rise of semi-legal economic groups (mainly Multigroup and VIS) linked to the racketeering business and expanding in other areas.³⁷ The wrestlers groups triggered popular discontent fuelled by media depictions (they were called 'thick necks') and the fact that they were easily recognisable, i.e. easily identifiable because of their appearance (similar to bouncers). The wrestlers and smugglers became the focus of anti-organised crime policies in the 1990s which later expanded with more controversial success to the trafficking of drugs and humans.³⁸

The growing fixation with organised crime however was difficult to back with hard data partly due to the secrecy of its operations, but also because the number of professional criminals seems actually to have been comparatively small. According

³⁶ J. Nikolov, 1997, *op. cit.*

³⁷ CSD developed an interest in the issue in the late 1990s, and found generous financial support from foreign donors. CDS reports established that organised crime emerged in the first years of transition. The main source was thought to be the former wrestlers and former employees of the Ministry of the Interior (a large number of which were laid off by Kostov's government) both of which started engaging in criminal entrepreneurship after state had lost its monopoly on violence. J. Nikolov, 1997, *op. cit.* Other sources (mainly tabloid media) explain the criminalization of the wrestlers with the single figure of Vasil Iliev who was a former wrestler-turned criminal in Hungary and returned to Bulgaria and set up a company called VIS (Vasil Iliev Securities) which employed his former friends from the wrestling club. VIS was a security company which allegedly employed racketeering methods.

³⁸ Smuggling had emerged as a lucrative business during the 1990s partly due to the embargo on neighbouring Yugoslavia, and partly due to trade liberalisation and the imposition of new duty system (a result of the trade and association agreements with the EU) which created incentives for smuggling and tax fraud. However, the extent of smuggling could be overstated as the country has increasingly removed duties and tax on trade with the EU, which comprises the largest part of its trade (an exception being trade with China which was taxed disproportionately highly and created conditions for smuggling). Financial reforms in the 1990s and the adoption of VAT tax created incentives to engage in VAT fraud rather than smuggling where taxation and profits from evading it are much higher. As VAT is a tax on consumption and borne by the buyer/consumer, this type of fraud is performed by legal businesses rather than organised crime.

to police data and independent research, even at the height of the anti-organised crime campaign, the numbers are quite low. A report published in 2004 suggests that, '[I]n Bulgaria there are more than 50 criminal groups, which are composed, on average, of less than 10 members'.³⁹ However, the problem with organised crime in Bulgaria was conceived as exceptional and presenting a major impediment for the country's transition and this view developed in a growing public consensus on the need to fight organised crime with a *pro-active* policy.

6.4. The fight against organised crime in Bulgaria: legislation and institutional reform

By the mid-1990s the UDF had managed to develop a powerful discourse linking organised crime with the former communists who resisted reform. Having displaced the former government, the leader of UDF, and Prime Minister from 1997 to 2001, Ivan Kostov, now conceived the fight against organised crime as a pre-condition of economic reform, i.e. reform could not take place without the decriminalisation of the economy. When the UDF won the elections in early 1997 after popular unrest triggered by an economic crash and the resignation of the previous socialist government, Kostov's government received popular support for wide-ranging reforms, and fast privatisation, backed up by a new IMF loan.⁴⁰ The government came into power with a programme titled Bulgaria 2001. The key policy areas in this programme were legislative changes and law implementation, the successful launch of a currency board (pegging the weak Bulgarian currency to the German Mark) and the fight against organised crime. The ultimate aim of the policies, according to Kostov himself, was to help Bulgaria enter the new millennium as 'a modern country with strong institutions'.⁴¹

³⁹ TRANSCRIME, 'The Contribution of Data Exchange Systems to the Fight against Organised Crime in The SEE Countries', Final Report, 2004 [online] <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN019080.pdf> accessed 21/01/09.

⁴⁰ UDF also received funds from other reformist liberal parties in Europe, and especially the Greek New Democracy.

⁴¹ Л. Василев, 'Костов между популярността сега и успеха утре' (Kostov between popularity today and success tomorrow), *Kapital*, бр.35, 30/01/1997 [online] <http://www.capital.bg/show.php?storyid=240465> accessed 12/01/2007.

In 1998 Bulgaria became one of the signatories of the pact on organised crime which the EU signed with the accession states.⁴² As part of the obligations under the pact, the country had to change its criminal law and criminal procedures to target organised crime and transnational crime according to the model developed by the EU. This required legislative and institutional changes, based on the principles of centralisation and specialisation of the judicial and law enforcement services and on the development of a model of investigation and prosecution focused on criminal offences defined as organised crime.⁴³ The policy developed by the government followed international trends and adopted international standards in: criminal law, criminal procedure, data protection rules, multilateral and bilateral agreements, direct channels of police and judicial cooperation, international and regional organizations. The process developed in four main directions, as identified in the previous chapter: 1) establishing organised crime as a matter of national security; 2) engaging in legislative projects linked to organised crime; 3) joining structures of international cooperation; 4) developing institutional reform on the executive (centralisation) and judicial level.

Organised crime and Bulgaria's national security

In August 1997, Bulgaria's National Security Service (NSS) published a report on the internal and external threats to national security. According to the report organised crime had become a threat to Bulgarian national security. In the same year the Parliament adopted a decision to create a permanent body called the Anti-mafia Commission, led by the Chair of the Parliament.⁴⁴ The commission decided on a set of activities in order to create a national framework for countering the problem of crime. One initiative was the adoption of a new internal security concept published in the same year, and a strategy for countering crime also prepared in 1997.⁴⁵ The

⁴² Pre-Accession Pact on Organised Crime between the Member States of The European Union and the Applicant Countries of Central and Eastern Europe and Cyprus (Text approved by the JHA Council on 28 May 1998) (98/C 220/01).

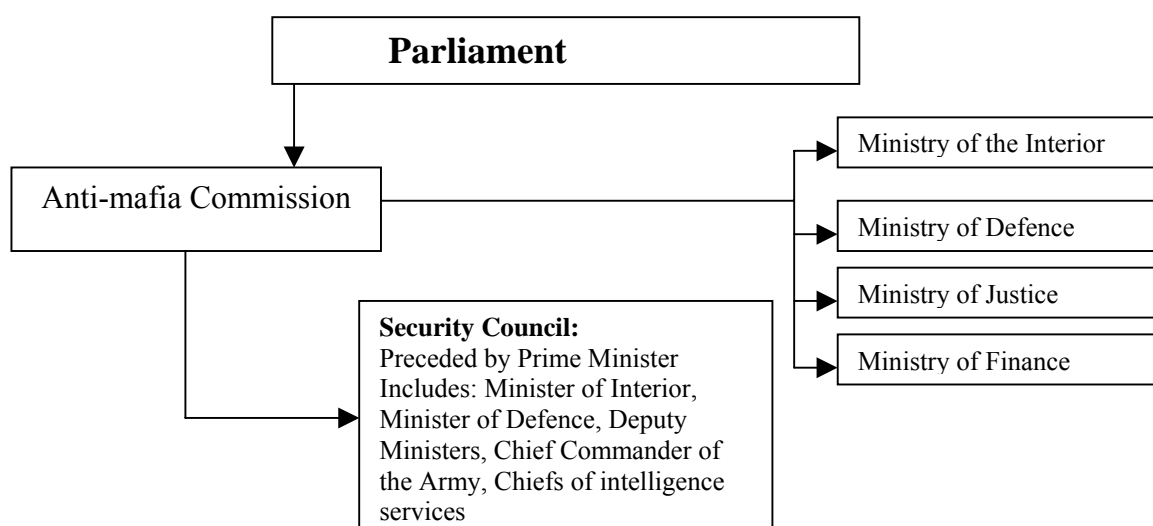
⁴³ F. Longo, 'The export of the fight against organized crime policy model and the EU's international actorness' in M. Knodt & S. Princen eds., *Understanding the European Union's External Relations*, Routledge, 2003, pp. 158-172.

⁴⁴ Н. Николов, *МВР в системата на националната сигурност. Взаимодействие и координация* (The Ministry of the Interior in the national security system. Interaction and coordination.), Албатрос, 2000, p. 16-17.

⁴⁵ Единна национална стратегия за противодействие на престъпността, adopted 16 July 1998, at http://europe.bg/upload/docs/Crime_Prevention.pdf accessed 26/01/2009.

Commission also decided to delegate powers to the Ministry of the Interior to undertake institutional and personnel changes in order to improve the investigation of ‘cases with unknown perpetrators’.⁴⁶ The Parliament was urged to prioritise the adoption of legislation on crime and corruption, and the relevant institutions – Ministry of the Interior, Ministry of Defence, Ministry of Justice and Ministry of Finances presented (see Figure 6.2.), to develop a closer framework for cooperation in the fight against crime, and particularly a centralised system for data exchange, as well as procedural rules for the functioning and use of that database by the cabinet.⁴⁷

Figure 6.2. National Security System in Bulgaria in 1997⁴⁸



The new Security concept reflected international trends and interpreted organised crime as a major risk to the security of Bulgaria as a Balkan country: ‘The high level of crime systematically threatens the security of the individual citizens, it destroys the economic welfare and the legitimacy of the state institutions in the region.’⁴⁹ The

⁴⁶ *Ibid*, p. 17. The parliamentary commission is not a sign of parliamentary debate as its decisions follow Western advice and focus on the executive branch in the fight against crime.

⁴⁷ *Ibid*.

⁴⁸ Based on data from Н. Николов, 2004, *op.cit*.

⁴⁹ Концепция за националната сигурност на Република България (National Security Concept of Republic of Bulgaria), приета с Решение на 38-о НС от 16.04.1998 г., обн., ДВ, бр. 46 от 22.04.1998г. [online] http://www.md.government.bg/bg/koncepcii/national_security_concept.html accessed 26/01/09.

concept suggested reform and modernisation of the legal process on the basis of a unified strategy for fighting crime and corruption. The Strategy on Countering Crime developed new ideas on crime reduction through further ‘maximum coordination’ of the legislative, executive and judiciary powers and devotes 12 sections to organised crime – more than other types of crime – despite the lack of definition of organised crime in the Bulgarian criminal legislation at the time. Both documents suggested a policy shift to countering the organised forms of crime seen as the more serious and more damaging type of crime.

The Concept and the Strategy were prepared using foreign materials.⁵⁰ The understanding of the problem of organised crime was limited at the time and the existing policy was underdeveloped – mainly because the tasks of dealing with this type of crime were new to the police, and also because of its growing international obligations linked to EU accession.⁵¹ Therefore the anti-organised crime policy was largely borrowed and was heavily influenced by foreign advisors, from the EU and particularly some of the more active EU member states and the USA.

Legislative changes

The scope of legislative activity was very wide and in the period 1997/9 Bulgaria adopted 14 laws linked to the fight against crime and corruption. In August 1997 the Parliament adopted a law to amend the Penal Code of Bulgaria which introduced criminal liability for new types of crimes such as racketeering and money laundering, illegal drug and arms trafficking, terrorism and copyright crime.⁵² The law also defined ‘organised crime group’ and determined sentencing for organisation of, and membership of, an organised crime group. In relation to the specifics of local

⁵⁰ According to analysis published in Capital Newspaper: ‘The envisaged action shows that the team that has developed the strategy has used exclusively concepts borrowed from foreign consultants who frequently visit the country, instead of focusing on the specific acts and characteristics of organised crime in Bulgaria.’ ‘Стратегията за престъпността – много и добри пожелания’ (The Security strategy – many and good wishes), Капитал, бр. 30, 01/08/1998 [online] <http://www.capital.bg/show.php?storyid=245825>: accessed 14/02/2007.

⁵¹ During communism the regular police administration and the prosecution in Bulgaria did not investigate criminal conspiracies. These were dealt with the secret services under the same ministry but independent from the police. Ю. Георгиев, Българските спец служби с поглед към обединена Европа (The Bulgarian special services with a view to united Europe), София: Прива Консулт ЕООД, 2000.

⁵² Закон за изменение и допълнение на Наказателния кодекс (Law to amend and supplement the Criminal Code), обн., ДВ, бр. 62 от 5/08/1997 г.

organised crime, the Parliament also amended the Insurance law aimed at reducing the opportunities for racketeering.⁵³ In 1999 the Parliament adopted a law on money laundering, a law for the control of narcotics and precursors, and a set of laws to counter offences in the financial and tax systems, as well as customs, and laws against corruption and gambling. The amendment of the criminal procedure in 1999 aimed to introduce practices such as cross-examination, equality of the parties in front of the judge, the ‘passive’ function of the judge, the ‘oral proceedings’ principle, and alternative means of concluding the trial.⁵⁴

Institutional reform

Changes in criminal law were aimed at the criminalisation of activities as forms of ‘organised crime’, and criminal procedure now aimed at enabling the prosecution of organised crime. This therefore affected institutional reform in the criminal justice system and had an impact on many of its branches – police, prosecution and courts, and data protection rules aimed at both the internal efficiency of the institutions as well as their international involvement in exchange of criminal data between Bulgarian institutions and signatories of agreements (states and institutions), and finally regional initiatives to facilitate the prosecution of cross-border crime. The institutional reform undertaken by the government aimed at the centralisation of the criminal justice institutions in order to improve the fight against crime.⁵⁵ According to the Bulgarian Code of Criminal Procedure (CCP) from 1994, the judicial authorities are the court of law, the public prosecutor’s office and the investigative service – the National Investigative Office and the District Investigative Office,

⁵³ The law forced the racketeering (wrestlers) groups to become legal as insurance companies.

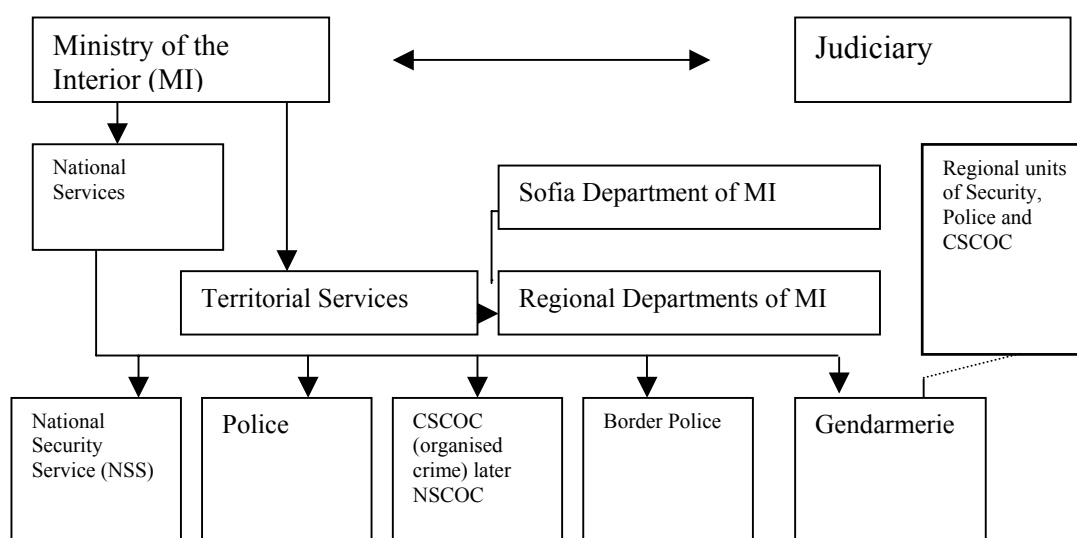
⁵⁴ TRANSCRIME, 2004, *op.cit.* This was part of the reform of the criminal justice system in accordance with the accusatorial tradition in law. The aim of the reform was to introduce more protection for the defendant within the system in accordance to protection of human rights obligations. See G. Marinova, ‘Bulgarian Criminal Procedure: The New Philosophy and Issues of Approximation’, *Review of Central and East European Law*, 2006, vol. 31, pp.45-79.

⁵⁵ Изказване на министър-председателя Иван Костов пред Народното събрание за мерките на правителството за борба с организираната престъпност и корупцията – 11 юни 1999 г. (Speech of the Prime Minister Ivan Kostov on the measures of the government in the fight against crime and corruption) [online]
http://sun450.government.bg/old/bg/prime_minister/statements/NS-Kostov_prestapnost_06_11.html
accessed 28/01/2009.

judges, public prosecutors and investigators. Investigators are magistrates who perform preliminary investigations in criminal cases.⁵⁶

The reform of the security services also emphasised the threat of organised crime and developed around police centralisation and the establishment of jurisdiction over organised crime investigations in the Ministry of the Interior's Department for fighting organised crime (i.e. to take-over organised crime from other security structures).⁵⁷ The new law on the security services transformed this Department into a Central Service for Combating Organised Crime (CSCOC) within the Ministry of the Interior and its chief was to be appointed by presidential decree (see Figure 6.3).⁵⁸ The CSCOC was given investigative powers although the Bulgarian Constitution granted the National Investigation Service which functions outside the Ministry of the Interior similar powers.

Figure 6.3. Criminal Justice System: the structure of the executive⁵⁹



⁵⁶ TRANSCRIME, 2004, *op.cit.*

⁵⁷ This department was created in 1991 within the Ministry of the Interior. It was not changed until 1997.

⁵⁸ The law also transformed the national border police (still called National Border Army) into a specialised police service charged with guarding the national borders and management of the border – crossing regime, with operational and investigative powers.

⁵⁹ Based on data from H. Николов, 2004, *op.cit.*

The new act abolished five previous laws which regulated the Ministry of the Interior and the other security services: the law on the National Security Service, the Central Service for Combating Organised Crime, the National Police, and National Fire-fighting Service. In effect the new law centralised the authority of the director of the Ministry of the Interior who now had more powers not only over the work of the police but also the anti-mafia and counter-intelligence services too. The direct command of the National Security Service and Central Service for Combating Organised Crime (CSCOC, and later a National Service, or NSCOC) over their respective regional branches was reduced to methodological and controlling functions. In this way the new law eliminated the policing functions from the NSS and left it with a sole counter-intelligence, or information gathering role (i.e. no power to arrest). According to Interior Minister Bonev, 'NSS will be catching spies. If they come across narcotics or terrorism, they will send the data to CSCOC, if they come upon white-collar criminal acts, they will report them to the economic police... This is the way it is done in the civilised countries'.⁶⁰

However, a number of different interpretations by the opposition and the media suggested more political reasons behind the changes. According to reports in the media, this move was prompted by the desire to attack the counterintelligence services which were perceived as a remnant of the former State Security service from the communist period. Furthermore, the tactics of using legislative changes rather than personnel changes was preferred due to the fear that such a personnel confrontation might bring out scandalous information which could compromise the government.⁶¹ According to Jovo Nikolov, the reinforcement of the CSFOS was a way to end discussions amongst some political circles over the establishment of a Bulgarian FBI, which would be directly accountable to the president or parliament and hence, avoid the direct control of the government.⁶² A much simpler explanation of this change was the desire to give new meaning to the CSCOC, which had been created six years before but which had experienced a complete failure in fighting

⁶⁰ М. Милев, 'Бонев централизира властта в МВР' (Bonev centralises the power at the Ministry of the Interior), *Kanumal*, бр. 31, 01/08/1997 [online] <http://www.capital.bg/show.php?storyid=240005>: accessed 12/01/2007.

⁶¹ М. Милев, 1997, *op.cit.*

⁶² Й. Николов, 'Новият закон за МВР: централизация и информация' (The new law of the Ministry of the Interior: centralization and information), *Kanumal*, бр 35, 30/01/1997 [online] <http://www.capital.bg/show.php?storyid=240430> accessed 12/01/2007.

what was seen as the new mafia structures (such as the wrestlers' associations and other shady economic groups). Despite the letdown, the CSCOC was perceived as a product of democracy whereas the NSS was a communist relic. Hence, the priority of fighting crime even when investigations would overlap was to be given to CSCOC.⁶³

International and media activities

Within the police itself the new developments meant that crime was now separated in two categories, ordinary crime and organised crime, and therefore it had to separate powers and responsibilities, as well as resources, between its departments. The departments tasked with the fight against organised crime prioritised crime which affected the EU such as drug and human trafficking, as well as international cooperation and activities.

Bulgaria signed agreements for cooperation in the fight against crime with the US, Germany, the UK, France, Italy, Belgium, Spain, Austria, China, India, Russia, Macedonia, and other countries. The problem of crime was also one of the topics of the official foreign policy in the region. Bulgaria signed agreements with Turkey and Romania, and a Protocol of tripartite cooperation for fighting organised and transnational crime with Greece and Romania.⁶⁴ In the words of then Foreign Minister of Bulgaria Nadejda Mihailova, the fight against organised crime is 'a new form of trust between the countries in the Balkans'.⁶⁵ In 1999 it joined the Southeast

⁶³ The shift of powers was carried out through changes in the Border and Territorial Army which the new law planned to transform into a border police and national gendarmerie, respectively. Their rank was also changed and they became national services while their functions were altered from 'defence' to 'protection'. The law also envisaged a transfer of border police from the southern borders to the north and eastern (Danube and the Black Sea) borders. This move is linked to the new priority of the border police which was catching smugglers on the northern and north-eastern borders. The role of the newly established gendarmerie was to guard strategic sites in the country and maintain order in unpopulated areas (outside towns and villages). This change of mission is prompted by the fact that the Territorial Army had lost its purpose and its staff remained unoccupied. The gendarmerie was also to include special anti-terrorist branches.

⁶⁴ Although there was a growing consensus on the nature of the new threats backed by bilateral and trilateral agreements in the region, each country still guarded its interests. Turkey for example used the Agreement on the Fight Against Organised Crime, Terrorism and Drug-Trafficking signed by Bulgaria, Romania and itself, for promoting its main concern with terrorism and Greece's support of PKK. 'Балканският пъзел все още не може да бъде подреден' (The Balkan puzzle is still unarranged), *Kanumal*, бр.19, 16/05/1998 [online] <http://www.capital.bg/show.php?storyid=244657>: accessed 13/02/2007.

⁶⁵ 'България генерира сигурност в Европа не само на думи' (Bulgaria generates security in Europe and not only rhetorically), *Kanumal*, бр. 16, 25/04/1998 <http://www.capital.bg/show.php?storyid=244223>: accessed 13/02/2007.

European Cooperative Initiative (SECI) for establishing a Regional Centre for Combating Trans-Border Crime in Bucharest, Romania and in 2000 Sofia hosted a meeting which set up the Stability Pact Initiative against Organised Crime (SPOC).

Although the international aspect was one of the key policy areas of Kostov's anti-crime agenda, it became particularly strong with the next government, which came into power in 2001 and which was led, in a further turn of events, by the former king, Simeon, as Prime Minister 2001-2005. Under the new government the Ministry of the Interior engaged in more extensive public relations campaigns and media management (many funded by the EU PHARE programme) which promoted the police as a crime fighter. The Minister appointed a new General Secretary, Boyko Borisov, a former security businessman who gained popularity from appearing as tough on organised crime (and was later elected as Sofia mayor).⁶⁶ The new government was also reacting both to intensified external pressure to demonstrate activity against organised crime and also some internal opposition and allegations of links with criminal organisations. In these conditions, linking the fight against organised crime with international partners and international police operations, and developing image management of the police, was the only option for raising the government's profile internally and externally.

The peak of international activity (and the anti-crime policy in general) was during the period when Bulgaria was negotiating over Chapter 24 of the JHA (between 27

⁶⁶ There has been some allegation that Borisov is himself a former 'wrestler', and member of organised crime. His work for the Ministry was focused on 'hard' organised crime, and especially international, cross-border crime. His appointment coincided with a gang war where many figures of the underground were publicly murdered. According to the UNDP Early warning Report, drawing on interviews with former police officers, the bombings in 2001 were 'connected with the redistribution of territories as a consequence of the expected replacements in the top police echelon', and particularly the appointment of Borisov for Chief Secretary of the Interior Ministry as he was allegedly linked to some of the former insurance groups. UNDP, 'Annual Early Warning Report', USAID/Open Society Foundation, UNDP project BUL/99/0212001 [online] at http://www.undp.bg/uploads/documents/1188_663_en.pdf accessed 02/03/2005. Between 2001 and 2004 Borisov engaged in almost militarised action against alleged criminals (also linked to escalating rivalry between Borisov and then prosecutor general and mutual accusations of failure to deal with crime). Some of the actions taken by the police to display their power included a three-day round-up of 250 individuals under investigation (unlike prosecutor mandate arrests the police do not need physical evidence for guilt so this list was arbitrary), a number of other mass arrest operations (including international actions under SECI, one of which included raiding some 20 000 sites and arresting 240 people), and a 28-day siege of the country house of a convicted criminal when the police in fact eliminated their target using anti-tank rockets when he was clearly not using any kind of armoury. М. Милев, Бойко Борисов и Четиредесетте разбойника' (Boyko Borisov and the Forty Thieves), *Kanumal*, бр 51, 20/12-9/01/2004.

June 2001 – 29 October 2003). Crime had already become one of the key internal problems in Bulgaria that had had a huge impact on its external relations and especially its accession to the EU. The country entered the negotiations on Chapter 24 without any objections to the need to adopt the JHA *acquis*. Between 2001-2003 Bulgaria adopted 12 new laws linked to the JHA, facilitating the fight against organised crime and international cooperation. The laws concerned the handling of personal and classified data of local and international sources, handling of migrants and refugees, people trafficking, money laundering, further amendments of the Penal Code with regards to organised crime, changes in the structure of the Ministry of the Interior creating a new Department for International Cooperation, and a Department dealing with Migration. It also adopted ten strategies and programmes for the application of these strategies, including an elaborate plan for reforming the judiciary, anti-corruption, the adoption of some 5000 pages of the Schengen *acquis*, anti-drug strategy, a strategy to fight financial fraud affecting the EU interests, and a new National strategy for counteraction crime. In 2001 Bulgaria adopted The United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25 of 15 November 2000, and its Protocols, on human trafficking, migrant smuggling, and firearms trafficking.⁶⁷

By 2001 the structure of the police was mainly aimed at the fight against organised crime and international cooperation: five of the Chief Directorates of the Ministry of the Interior were dealing with aspects of organised crime, terrorism or border control, international cooperation, and each regional branch of the police had a specialised Department for the Fight Against Organised crime. Furthermore, the country had to set up an Agency for financial intelligence in 2001 as required by the law on Money Laundering. The Agency was set up as an independent body linked to the Ministry of Finance and had the task of collecting, analysing, investigating and transferring information on suspicious cases to the police, as well as exchanging information internationally. Since the conclusion of the negotiations on the JHA *acquis*, Bulgaria ratified all relevant conventions signed by the member states within the JHA

⁶⁷ Bulgaria was already a signatory of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (ratified in 1992), the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ratified in 1993), the 1999 Council of Europe Criminal Law Convention on Corruption (ratified in 2001). Source TRANSCRIME, 2004, *op.cit.*

cooperation. In 2004 it adopted the European Arrest Warrant and amended its Penal Code once again in order to adopt EU Conventions on extradition.

6.5. Some political complications of the focus on organised crime

These anti-crime initiatives of the governments since 1997 were supported by the public. The early actions of Kostov's government were limited but focused on the current public concerns and gained benefits for the new government, especially some actions against the so-called economic groups such as Multigroup, as well as against some more 'petty' forms of organised crime, and especially the notorious wrestlers groups. However, the actions against organised crime were seen as superficial and sometimes even ridiculed. The press increasingly targeted the gap between the governments' intentions and its inability to tackle the problem of crime. The Kostov government's promise to 'fight against street and organised crime through a series of economic measures: speeding up the privatisation of state property, lowering the licensing minimum, simplifying the numerous and complex administrative procedures, linking the customs and taxation system in a common system of accountability and control, change of the system of taxation so that the taxes become more tolerable and their avoidance – more difficult' did not yield results because, on the ground, the link between these reforms and reduction of crime was not visible.⁶⁸

One example of the police's disarray was the policy against the wrestlers when the legislative change appeared to turn their shady racketeering business into legitimate insurance businesses, albeit one which still relied on their violent reputation. The police came up with the idea of physical removal of the insurance companies stickers from cars and shops and these actions were seen in the press as a display of the ineffectiveness of the reform policies. The removal of stickers clearly demonstrated the failure of widely publicised economic reform to trickle down to the everyday problems which concerned the wider public. Furthermore, taking the offensive against the wrestlers was not even popular with experienced policemen, for, as some of them pointed out to UNDP researchers raiding these groups left their members relatively less well-off, resulting in many of these now impoverished members

⁶⁸ Л. Василев, 'Костов между популярността сега и успеха утре', *op.cit.*

resorting to lower levels of criminal activity, i.e. stealing and other types of low-level crime which increased ordinary, street crime.⁶⁹ And ordinary crime, the UNDP report points out, ‘continues to be perceived as the greater danger in comparison with organised crime.’⁷⁰

This separation of crime into two categories, street crime and organised crime was one of the underlying problems of the institutional policy. It led to a separation of powers and responsibilities between different departments of the Ministry of the Interior (CSCOC and the regular police), and between the different bodies of the criminal justice system which created duplication of tasks and clashes of jurisdiction (including a clash between the prosecution and the police over investigative powers). The first clash within the police services took place a few months after the launch of the new legislative changes and set the Minister of the Interior Bogomil Bonev against his subordinate Chief of the National Police Administration Slavcho Bosilkov.⁷¹ The conflict materialised at a meeting dedicated to the problem of crime in October 1997 where the Chief of the Police presented a report on the situation with crime and the police. In his report Bosilkov opposed the changes initiated by his boss and criticised the weakening of the lower branches of the police administration and the centralisation of power on a national level, in the Ministry of the Interior. His criticism extended to the personnel policy of the Ministry which had changed the management of some regional police departments, along with dismissing many policemen. Bosilkov proposed, instead, a centralisation on the level of the National Police Administration within the Ministry and his position was shared only by the Police Union’s leader Emil Rashev. The head of the CSCOC Kiril Radev stood on the side of Minister Bonev and according to them the centralisation on the level of the regular police had been tried and tested and had not produced results. The attack turned into a general assault on the police administration which was criticised for

⁶⁹ UNDP Bulgaria, Early Warning Report, *op.cit.*

⁷⁰ *Ibid*, p.94. There are other examples of state regulation which have affected the organised crime business such as the introduction of a new system of car registration which led to changes in the market of stolen cars and the emergence of car ransom.

⁷¹ ‘Шефът на полицията разклати стола под краката си’ (The boss of the police rocked the chair underneath him), *Kanumal*, бр. 41, 11/10/1997 [online] <http://www.capital.bg/show.php?storyid=241212>: accessed 20/02/2007.

their work on the whole and created antagonisms against the structures tasked with the fight against organised crime.⁷²

The institutional reforms, and the increase of the powers of the Ministry of the Interior, were also strongly criticised by the Prosecutor General and later, by the President himself.⁷³ The main criticism was against the increasing politicisation of the institutions, i.e. the appointment of political administrators linked to the party in power instead of experts.⁷⁴ All appointments or dismissals in the security service were widely publicised by the media and scrutinised by the opposition. The importance of the fight against organised crime for the governments in Bulgaria was unprecedented but it repeatedly failed to secure convictions. There were various reasons for this failure but the responsibility was usually transferred to the judiciary by other parties.

The government argued that the lack of coordination between the institutions of the police, the preliminary investigation and the prosecution was to blame for the delay of trials and lack of convictions. Kostov requested a debate about the fight against crime in parliament and the formation of a special investigative committee (modelled on the Italian anti-mafia commissions). As such actions are typically undertaken by the opposition, the fact the governing party organised this debate was interpreted as the launch of the campaign against the judiciary with the ultimate aim of changing the constitution, in order to relax the guarantees of separation and independence of powers. This was seen as necessary for the fight against organised crime as it would allow the grant of more investigative authority to the executive and remove the immunity of the magistrates, i.e. impose some control over the judiciary by the executive power.⁷⁵ The government also initiated a policy of change of the local

⁷² *Ibid.*

⁷³ 'Президентът поиска повече правомощия за спецслужбите' (The President asked for more powers for the special services), *Капитал*, бр.41, 11/10/1997 [online] <http://www.capital.bg/show.php?storyid=254281>: accessed 16/02/2007.

⁷⁴ 'Гаранцията срещу политизацията на МВР е в спазването на закона' (Observing the law is the guarantee against politicization of the Ministry of the Interior), *Капитал*, бр. 41, 11/10/1997 [online] <http://www.capital.bg/show.php?storyid=254511>: accessed 16/02/2007.

⁷⁵ Magistrates cannot be dismissed unless they have been involved in a crime and they have been sentenced. Hence, it is difficult to impose demands on them for more efficient work in the fight against crime. Another string in the new policy is the aspiration to increase the powers of the Minister of Justice and effectively make him/her a 'guardian' of the magistrates, i.e. have the ability to approach the Supreme Court of Justice.

party representatives with people who will pressure the local government and institutions to fight crime.⁷⁶

The actions of the Ministry of the Interior under Kostov led to direct accusations of it turning Bulgaria into a police state and effectively aggravating the working conditions of the different branches of the criminal justice system.⁷⁷ In an attempt to avoid such accusations the government tried to involve all political parties and public opinion in the debate on crime and successfully created a general consensus that organised crime was the most pressing problem of the country at the moment and required extraordinary measures. In this way, along with other legislative changes, discussed earlier in the chapter, such as the new law of public administration and the law on the Ministry of the Interior, and legislative measures against corruption, the changes of the laws regulating the judiciary were promoted as part of the fight against organised crime.

The rift between institutions became deeper with the increased pressure put on the judiciary, which used its independence to fight back. In one case, the Minister of the Interior publicly warned the Supreme Judicial Council that if they supported a local prosecutor, with whom the Ministry had a problem, they would in fact be supporting the mafia: an allegation which caused an immediate reaction from the Council which declared this 'an impermissible interference in objective resolution of the problem'.⁷⁸ In the so-called war of the institutions, the Ministry of the Interior used the discourse of corruption to discredit the judiciary and the local police departments (such as the police force in the city of Varna where 86 policemen were fired in 1997 for allegations of links with the mafia).

The allegations of inefficiencies aimed at the judiciary were met by counter-allegations that they had to work on the basis of evidence collected by the police, and they could not engage in a strategy against organised crime because they needed to

⁷⁶ 'Костов свива синия юмрук срещу престъпността' (Kostov clenches the blue fist against crime), *Капитал*, бр.37, 13/09/1997 [online] <http://www.capital.bg/show.php?storyid=240700> accessed 12/01/2007.

⁷⁷ Й. Николов, 'Целта на дебата за престъпността е промяна в конституцията' (The aim of the crime debate is change of the constitution), *Капитал*, бр. 38, 20/09/1997 [online] <http://www.capital.bg/show.php?storyid=240864> accessed 12/01/2007.

⁷⁸ 'Прокурорско време разделно' (Time to divide the Prosecution), *Капитал*, бр. 44, 1/11/1997 [online] <http://www.capital.bg/show.php?storyid=241479>: accessed 12/02/2007.

respond to all types of crime and could not, as an independent institution for administering justice, prioritise a certain type of crimes as a result of external pressure.⁷⁹ This led to reinforcement of the view among civil servants and international observers that the problems of the fight against organised crime are to be found in the judicial branch, and especially the prosecution service, whose independence prevented control over its actions or lack of actions and opens the system to corruption and lack of accountability.⁸⁰ The supremacy of the Prosecutor General's office within the system of the judicial power was blamed for the inefficiencies of the judicial system as a whole. The Prosecutor General Tatarchev opposed the attacks from the Ministry of the Interior and in turn accused them, and the police, of corruption. He pointed to a case in which the CSCOC failed to act after a warning about a group of security services policemen who were engaged in racketeering. In response, the CSCOC organised a press conference and blamed the prosecution for disclosing information on policemen working under cover in the criminal underworld and ruining the police action.⁸¹ The war between the Prosecutor General and the different branches of the executive made the former look for support in the major opposition parties and, ironically, to some influential business organisations supposedly linked to organised crime.⁸²

These mutual accusations between the institutions continued throughout the whole process of transition and the development of Bulgaria's anti-crime policies. The problems linked to developing a policy on organised crime identified in the previous chapters were fully reflected in the case of Bulgaria, and these problems help to explain of the politicisation of institutions. The institutional wars were triggered by different and clashing priorities, as well as different institutional cultures. According to a recent study by the Sofia-based Centre for Liberal Strategies 'Task Force and

⁷⁹ CLS report, *op.cit.* p. 9.

⁸⁰ Author's personal communication with legal experts from the Centre of the Study of Democracy in Sofia.

⁸¹ 'Татарчев срещу Бонев – играта загрубя' (Tatarchev versus Bonev – the game got rough), *Капитал*, бр. 45, 8/11/1997 [online] <http://www.capital.bg/show.php?storyid=241686>: accessed 12/02/2007.

⁸² *Ibid.* The article suggests that the assault on the Prosecutor general is meant to undermine the relations between Tatarchev and the Bulgarian Socialist party, the main opposition party because Tatarchev made a career of purging the former communists. However, in order to prevent changes of the constitution, the Prosecutor General looked for parliamentary support in the opposition and the BSP made it clear that they would not endorse the proposed changes. He also lobbied in the MRF, the second party in opposition. Tatarchev also approached some business organizations which had criminal links such as Multigroup.

Organised Crime in Bulgaria' the various institutions have different definitions in dealing with organised crime as well as different, and sometimes conflicting, approaches to the problem:

The police understand organised crime as a network phenomenon and have adopted a strategy of undermining the economic base of the organised criminal groups. For the prosecutors, it is almost impossible to substantiate organised crime charges in court, and because of that their preferred strategy is to indict suspected members of organised groups for 'ordinary' crimes. The courts, on their part, have almost no jurisprudence on organised criminal groups. Having in mind these differences, it is possible to conclude that the institutional responses of the police on the one hand, and the prosecutors and the courts on the other, differ in important ways: the former attempt to address networks, the latter address mainly individual crimes...Although virtually all of our respondents recognised the importance of the inter-institutional cooperation in the fight against organised crime, each of them saw not their own institution, but their partners as a main source of obstacles in the co-operative effort. Commonly, the police accuse the courts, the courts – the prosecutors, and the prosecutors – mainly the police and sometimes the courts. Not surprisingly, this leads to different understandings of the need for future institutional reforms.⁸³

Ivan Krastev argues that developments in Bulgaria showed that it was not a police state but a weak state where the government risked becoming a victim of such 'administrative mafias'.⁸⁴ In 2001 the UDF lost the elections due to allegations of corruption, and the next government became a target of mounting accusations of

⁸³ CSD, 'The Fight against Organised Crime in Bulgaria: Review of Institutional Concepts and Strategies', Summary of key findings of Project Task Force on Organised Crime in Bulgaria [online] <http://www.cls-sofia.org/uploads/files/Projects%20files/The%20Fight%20against%20Organised%20Crime%20in%20Bulgaria.doc> accessed 27/04/2009.

⁸⁴ 'Дебатът за подслушването показва, че не сме полицейска, а слаба държава. Интервю с политолога Иван Кръстев,' (The debate on tapping the lines shows we are not a police but a weak state. Interview with political scientist Ivan Krastev), *Kanumal*, бр. 31, 4/08/2000 [online] <http://www.capital.bg/show.php?storyid=204202>: accessed 15/03/2007. Krastev points out that the problem is not that there is no public control over the services but there is no political control over them. He argues that the fight against crime can only be successful after strengthening the political process.

links with organised crime, which it largely ignored and chose to distance itself from the other internal actors in the policy on crime. The government even refused to participate in the first meeting dedicated to the problems of crime organised by the new President Purvanov who accused the cabinet of ‘political arrogance’.⁸⁵ As discussed earlier this government engaged in a public relations campaign and hard policies on crime, and further reform of the judiciary which was by that stage explicitly linked with the fight against crime.⁸⁶

6.6. Judicial reform and the fight against organised crime

The general judicial reform started much earlier, in the early 1990s, with key amendments to the Criminal Procedure code in 1997 and 1999 – they focused on the overall working of the system which had to be adjusted to the process of democratisation and human rights protection.⁸⁷ In the period between 2001 and 2007 the Bulgarian policy on organised crime was partly linked to the reform of the judiciary, and particularly to that part of the reform which aimed at improving the efficiency of criminal procedure in order to secure more convictions. The link between the fight against organised crime and judicial reform became even stronger after the negotiations with the EU on the JHA were concluded in 2003.⁸⁸ The reform of the judiciary in the later stages was in fact an attempt to correct some of the changes introduced with the earlier amendments which introduced more legal safeguards but slowed down and complicated the criminal procedure, and this was in

⁸⁵ ‘Президентът разкритикува НДСВ по всички фронтове’ (The President criticised NDSV on every level), *Kanumal*, бр. 35, 31/08/2002 [online] <http://www.capital.bg/show.php?storyid=217183>: accessed 15/03/2007.

⁸⁶ There is an additional reason for this development – the new government came from a new political formation called New Times, united under the figure of the former Bulgarian king who came back from exile. The party had a high number of professionals in its ranks, many of which from the legal profession who became MPs. The high number of lawyers in the Parliament meant more attention to the judicial reform.

⁸⁷ The amendments to CCP in 1997 introduced the use of electronic surveillance and the institution of witness protection – both of those instruments are part of the Western practice and linked to the fight against organised crime. The 1999 amendments introduced plea bargaining, and a number of adversarial elements to the procedure and reduced the role of the court in the pre-trial procedure but established the requirement that a judge is present at a witness or defendant’s examination, which later created practical difficulties for the investigators, slowed down the investigation and problems of coordination between judges and the police.

⁸⁸ Accession Treaty was signed on 25 April 2005 but it still held conditions for accession. Bulgaria was not given a confirmation that it would join on the provisional date of January 2007 until the very last moment, in the autumn of 2006. This delay was justified with increasing the power of conditionality on the fight against organised crime and judicial reform.

conflict with the priorities of the fight against organised crime which now sought fast convictions.⁸⁹ The later amendments to the criminal procedure focused on a compromise between protection of rights on one hand and efficiency on the other, and compromises between the independence and incorruptibility of the judiciary.⁹⁰

Therefore since 2000 the judicial reform process was motivated by aims such as efficiency, accountability and control over the judiciary. Initially, expert analyses for this reform focused on the *pre-trial phase* of the criminal procedure where the problems with the fight against organised crime were identified. The EU's official opinion was that 'the implemented reforms only partially meet the requirements, while the reform in the pre-trial phase in Bulgaria should be continued in order to attain compliance with the EU efficiency criteria... The recommendation is to continue the reforms, which should lead to an improvement of the efficiency and the accountability of the judicial system'.⁹¹ The overall structure of the judicial system is presented in Figure 6.4. The institutions of the pre-trial phase are the Prosecution, and the investigative bodies – police and the specialised investigation service.⁹² In later stages the reform process focused on judges and improving their work mainly

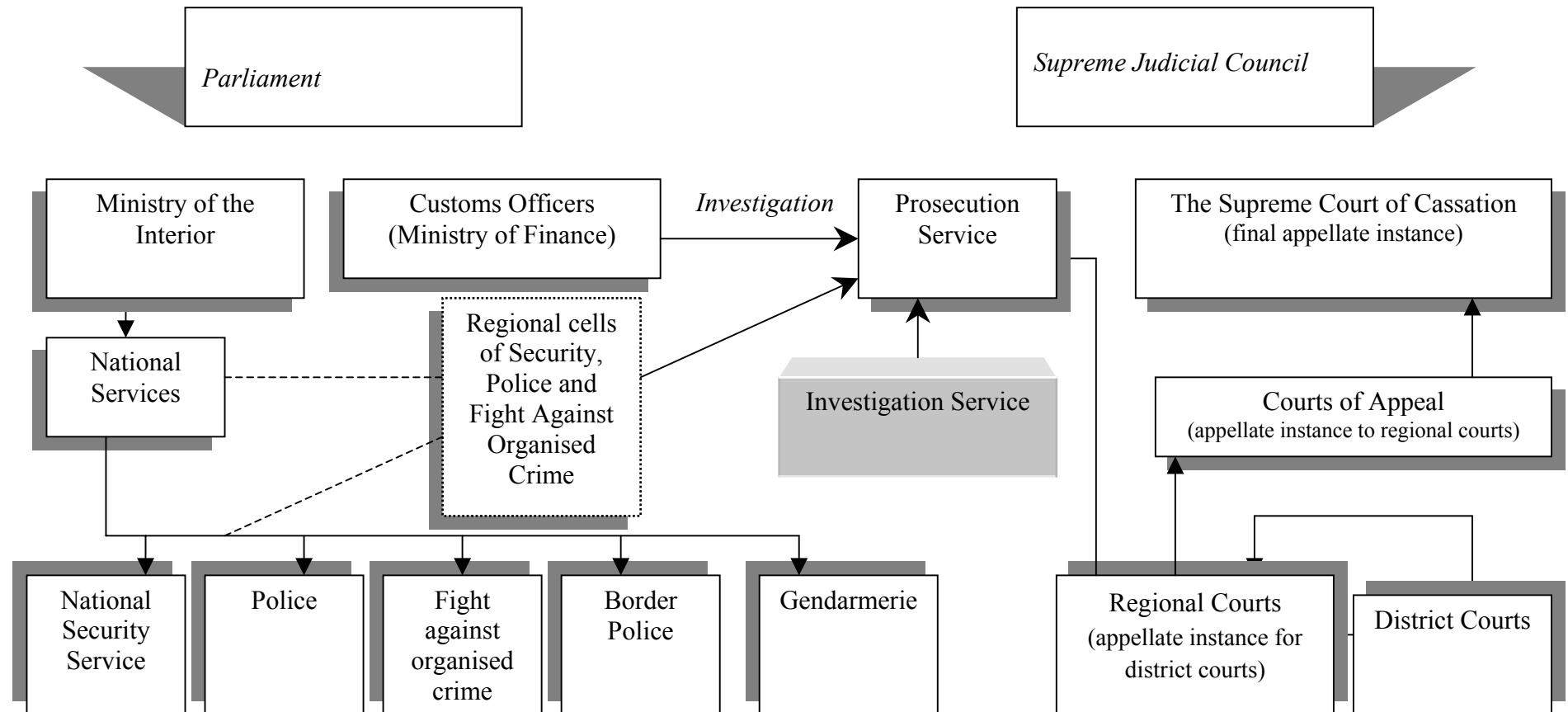
⁸⁹ According to some observers, the problems with the judiciary were created not by the clash or priorities but by the new Bulgarian constitution, which established a separation of powers and gave independence to the judicial branch, which opened possibilities for corruption. The reform of the judiciary was officially part of the state's anti-corruption policies. Yordanova argues that '[t]his independence prompted the political parties to seek indirect channels of influence, which in the initial years of transition were ensured through sweeping staff replacements at all levels – from the rank-and-file to the senior positions.' Furthermore, the anti-corruption policies and the reform of the judiciary were pushed by the newly institutionalized civil society in Bulgaria in the form of NGOs such as *Coalition 2000* through its annual Corruption Assessment Reports, the *Judicial Reform Initiative* through the Program for Judicial Reform (2000), the Center for the Study of Democracy – through the Judicial Anti-Corruption Program (2003), etc.' M. Yordanova, 'Judicial Reform – State of Play and Opportunities' in M. Yordanova & D. Markov, *Judicial Reform: The Prosecution Office and Investigation Authorities in the Context of EU Membership*, Sofia: CSD, 2004, p.6-8 [online] http://pdc.ceu.hu/archive/00002785/01/fileSrc_7.pdf accessed 28/01/08.

⁹⁰ See G. Marinova, 2006, *op.cit.*

⁹¹ M. Yordanova, 2004, *op.cit.*, p 5.

⁹² The pre-trial phase in the Bulgarian Criminal Procedure takes one of two alternative forms: preliminary investigation or police investigation (see Figure 6.3). Therefore there are two bodies that perform investigations: investigators (investigating magistrates, or *sledovateli*) and police officers. The judges, prosecutors and investigators are all magistrates and have the same judicial status, rights and immunities (the investigators are subordinate to the Prosecutor). The police officers who engage in investigation are part of the executive. Serious crimes were investigated by a preliminary investigation by the Investigation service which is more complicated as it follows a stringent set of legal rules (i.e. it is a judicial investigation). The police officers usually do not have juridical training and perform less complicated cases, or those where immediate collection of evidence is needed.

Figure 6.4. Criminal Justice system: Executive – Judiciary, and the Investigation Service ¹



¹ Based on data from Bulgarian legislation, Н. Николов, 2004, *op.cit.* and Г. Marinova, 2006, *op. cit.*. The Bulgarian Constitutional Court is not part of the judicial system as a judicial body but can be summoned to interpret acts in the Criminal Procedure as constitutional or not.

through further education and tighter control.¹

As discussed earlier, most of the criticism was directed at the Prosecution Service, which is part of the judicial system but is also independent from the control of either the judiciary or its control body the Supreme Judicial Council, or the legislative and executive branches. It is run on a hierarchical principle and the Chief Prosecutor is the sole person in charge over the whole institution, responsible for initiating investigations and bringing cases to trial.² Furthermore the prosecution service had begun to react against the attacks on its independence and accused the institutions of the executive and judiciary with incompetence and inefficiency, in some cases provoking scandals in the media.³ The preparation of the amendments of the Criminal Procedure in 2002 triggered endless debates in the parliament and the media, and mutual accusations, propositions for further reform, attacks and counterattacks linked to the perceived redistribution of power and establishment of more direct control.⁴

The new debate re-opened the issue of responsibility and determining which section of the criminal justice chain was to blame for the failure of the fight against

¹ After limiting the powers of the Prosecution over the pre-trial phase and increasing the role of the judges, the Prosecutor General accused the judges of using their powers inappropriately and for being 'spoilt', and 'trying to show off'. 'Филчев срещу Филчев' (Filchev versus Filchev), *Капитал*, бр. 11, 17/0/2001 [online] <http://www.capital.bg/show.php?storyid=207690>: accessed 15/03/2007.

² This position of the Bulgarian Prosecutor is borrowed from the Soviet and later Russian criminal procedure. According to experts this was appropriate for the Soviet system where the prosecutor was under the control of the Communist Party but in the post-communist period the institution remained uncontrollable. The alternative practice (in some Western systems) is to establish the Prosecution under the executive branch. The EU advised to subordinate the prosecution to the courts. 'Сини депутати лобират за прокуратурата' (Blue [liberal] MPs lobby for the Prosecution), *Капитал*, бр.4, 27/01/2001 [online] <http://www.capital.bg/show.php?storyid=206788>: accessed 15/03/2007.

³ For example, in 2001 the Prosecutor published a report on the use of special investigation techniques (electronic surveillance, phone calls monitoring) by the police which showed that in 97.33% of the cases they had not brought forward evidence which could be used in court. In the period 1999-2000 the police had used such techniques 10 020 times and only 269 had produced results. The Prosecutor accused the police of not only making the use of such techniques the main method of collecting evidence but for over using it and using it in inappropriate cases, including cases of illegal fishing. 'Мания за преследване налегна прокуратурата' (The Prosecution overcome by a fear of stalking), *Капитал*, бр.4, 27/01/2001 [online] <http://www.capital.bg/show.php?storyid=206786>: accessed 15/03/2007.

⁴ The Prosecutor General clashed with the Chief of the Investigations service, and the Chairman of the Supreme Court of Cassation. The clashes were interpreted as political or personal but the justification was usually the protection of the powers of the Prosecution services in the debate of which branch, executive or judicial, was to take control over it. 'И преди изборите главният прокурор натиска политиците за повече власт', *Капитал*, бр.24, 16/08/2001 [online] <http://www.capital.bg/show.php?storyid=209435>: accessed 15/03/2007.

organised crime. The Prosecution blamed the judges for ruling on cases too slowly, to which the judges replied with published statistics of the slow proceedings of the investigation. The police argued that they catch criminals and the judiciary sets them free; the judiciary blamed prosecutions based on poor evidence collected by the police who are not jurists and collect evidence which goes against the law.⁵ The envisaged amendments in the criminal procedure were developed under the motto of uniting against fighting organised crime but the plans to improve efficiency at the expense of rights were not readily welcome. The Prosecution united its efforts with the Ministry of Justice, and proposed that it should stay in the judicial system but be accountable to Parliament, and work with the government on a strategy to fight organised crime and corruption.⁶ The opposition from the Prosecution and its political allies led to a change of focus on the Investigation service (Figure 6.4), which the Prosecution itself suggested it should takeover via a new amendment of the criminal procedure. A few months later, in 2003 the Prosecution became more open to the ideas of reform which it previously opposed as it realised that this was alienating its partners and foreign donors.⁷

The compromise between the pressures to eliminate the obstacles to the investigation or pre-trial phase, and the opposition of the branches of the system affected by these plans materialised in a new amendment to the criminal procedure in 2004.⁸ The amendment reduced the competences of the investigators and expanded those of the police officers (so-called *doznateli*) who took over the investigation of many crimes which were previously under the jurisdiction of the Investigation service. The latter was given a small number of crimes which it has an obligation to investigate, e.g. most serious crimes, such as high treason, espionage, murder, etc. but which are in fact a tiny percentage of crimes. These amendments established the police and hence

⁵ *Ibid.*

⁶ ‘Филчев и Станков ще декларират бъдещо сътрудничество’ (Filchev and Stankov will declare future cooperation), *Kanumal*, бр. 43, 26/10/2002 [online] <http://www.capital.bg/show.php?storyid=218084>: accessed 15/03/2007.

⁷ ‘Прокуратурата опитва нова тактика’ (The Prosecution tries new tactics), *Kanumal*, бр. 3, 25/02/2003 [online] <http://www.capital.bg/show.php?storyid=219606>: accessed 26/03/2007.

⁸ In 2001 the rules on police investigation were amended and as a result between 2001-2003 there were no differences between police and preliminary investigation apart from the identity of the investigators. In 2003 these changes were repealed and the pre-2001 system was re-introduced. As Marinova points out ‘[t]his highlights the instability of legislation governing police investigations and also suggests that amendments to CCP in this sphere are likely to continue’. G. Marinova, 2006, *op.cit.* p.69.

the executive as the key investigative body in the criminal justice system.⁹ This led to further problems and an increase of the complaints from the prosecution and judges about the juridical quality of the investigation and collected evidence.¹⁰

The amendments also simplified the criminal proceedings (particularly changes concerning opening and closing proceedings) in order to ‘help reduce burdens upon the overloaded criminal court system, i.e. fewer criminal proceedings will be opened’.¹¹ Needless to say these changes also added to the criticism of an inefficient criminal justice system. In effect the attempt to avoid the more formal and longer stages of the investigation which was longer because of its quality control and accumulation of admissible evidence, created more problems for the trial stage as well as more ground for appeals – both of which prolonged the proceedings and added to the public dissatisfaction with the judiciary.¹² Therefore the next step was the reform of this part of the criminal justice process which became the subject of a new dispute in the immediate pre-accession period 2006-2007, and which involved a more politically intense situation, as it demanded further amendments to the Bulgarian constitution.

The extensive and prolonged reform of the judicial system was mainly caused by the perceived lack of success in the fight against organised crime. An extensive study conducted by the Bulgarian Think Tank Centre for Liberal Strategies, found that the work of the Bulgarian judiciary *in general* is not deficient in comparison to western judicial systems. The study compared sentencing and duration of proceedings and did not find evidence to suggest that the Bulgarian system was in need of further reform. However the only area where the system seemed to fail was the fight against organised crime:

⁹ Customs officers are the other investigative institution linked to the executive.

¹⁰ Another set of amendments were introduced in 2004 which were linked to the ratification of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters – The Bulgarian legislators had to adopt more investigative and trial techniques such as use of video or telephone conferences for witnesses and experts, cross-border observations, controlled delivery, covert investigations, joint investigation teams.

¹¹ G. Marinova, 2006, *op.cit.*, p.63.

¹² According to Marinova, ‘[A]lthough it is a speedy procedure, police investigations have often been criticized in legal literature. This criticism has been directed primarily at the lack of clear rules and prerequisites of opening police investigations and for bringing charges against the defendant which could lead to unfounded acts on behalf of police officers and to violations of basic human rights’. *Ibid*, p.69. The existence of criticism from judges will be discussed in the final chapter.

The fact that as a whole the judicial system functions satisfactorily does not mean that there are no considerable problems in some specific spheres. These problems concern limited in size but yet very important spheres such as the fight against organized crime, money laundering, high-level corruption. In these spheres the system faces apparent problems. It is difficult to place the difficulties the Bulgarian judicial system faces in comparative perspective, because of lack of data. Yet, the level of unresolved contract killing cases, the lack of convictions for participation in organized groups, the excessive focus on petty corruption as opposed to high-level political corruption are sufficient indicators of serious problems.¹³

However, as the report indicates, there is the problem of measuring the success of the courts in the fight against organised crime as the statistics lump together all crimes defined as organised crime-related and it is therefore difficult to judge the level of success in this area, i.e. the level of sentencing for participation in organised crime. The problem of measuring this type of crime is linked to the problems of definition which the investigative organs come across and the almost impossible task of proving membership in a criminal organisation.¹⁴ Some of these issues will be discussed in more detail in the next chapter.

6.7. Conclusion

Since 1997 Bulgarian political elites have adopted an anti-organised crime agenda which was claimed to be necessary for the aims of overall structural and political reform of the country, as well as its accession to the European Union. The liberal

¹³ Centre for Liberal Strategies, 'The Judiciary: Independent and Accountable. Indicators on the Efficiency of the Bulgarian Judicial System.', Preliminary report of the Project 'Strengthening of the Policy Making Capacity of the Bulgarian Judicial System', 2006, p. 9 [online] <http://www.cls-sofia.org/download.php?id=52> accessed 27/04/2009.

¹⁴ This was pointed out by senior officials in press conferences with the media where the journalists are asked to 'remove the term 'organised crime' from their vocabularies' as such a thing 'does not exist'. The Bulgarian Penal code does not define organised crime, or organised criminal group, or mafia as such. 'Езикови тревоги в МВР' (Linguistic troubles in the Ministry of the Interior), *Kanumal*, бр. 3, 25/01/2003 [online] <http://www.capital.bg/show.php?storyid=212146>: accessed 15/03/2007.

reformist government of Ivan Kostov and its successors developed an anti-crime strategy which reflected international trends and focused on institutional and legislative reform, and international cooperation. The logic and suitability of this policy was rarely a topic of considered democratic debate since the fight against organised crime was heavily promoted as incremental for the progress and success of the reform, and organised crime itself received a security issue status. These developments were not backed by hard data on crime and solid theorisation of the security risks that it posed to the country. Most of the governmental rhetoric, as well as programmatic and legislative texts were borrowed from foreign sources, and organised crime was *found* by analysing the criminal opportunities which arose in the 1990s.

While Bulgaria experienced a rise in recorded crime and changes in the typologies of crime, closer investigation into Bulgaria's anti-crime policy presented in this chapter did not substantiate the claim that Bulgaria had a unique and significant (in relative terms) problem with organised crime which required such extensive reform policy priorities over other social issues. From a more general perspective, however, the reform was largely successful in transforming the state police into a more empowered institution, and the judiciary into a more efficient system. The issues of both institutions seem to originate from the lack of resources or smaller administrative deficiencies but the problems they encountered while implementing the organised crime strategy led to institutional and media wars provoked by shifts of power, and tensions between the independent executive and the judicial branch, and public demonstrations of personal power. Thus the ambitions of a pro-active policy against organised crime had to be limited to actions with dubious cost-benefit outcomes, and some further complications in the investigative and judicial process.

All these problems seem to emerge from a backlash of the extreme politicisation of the anti-crime agenda, and the Kostov's government's priorities in its political battle with the socialist party. After 1997 the fight against organised crime became one of the hot topics of Bulgaria's political life which intensified in the next ten years. One of the analytical weekly newspapers *Capital* published no less than 763 articles linked to the organised crime problem in the country for that period, and the topic was present in almost every edition of the daily newspapers and other electronic

media. The reason for this rise of attention was three-fold – first, the UDF and Kostov's government prioritised the fight against organised crime and this made the policy a focus of public scrutiny. Secondly, Bulgaria had started to get negative press abroad in connection with the emergence of organised crime groups and this resonated in the Bulgarian press, especially in critiques of the government. The negative reports of the European Commission also added to this internal criticism. Third, the media and the public perceived the government as incapable of solving the problem with crime. As a result of this, the problem of organised crime became a test of governance, and of each subsequent government's abilities to govern in conditions of increasing loss of political control over institutions. On one hand the governments got trapped by the increasing demand for successful crime policies, which in the case of organised crime were very difficult to demonstrate, and on the other, they continued to engage in such policies in order to increase international and public support. In conditions of limited resources the authorities relied on public relations activities and issues, more and more press releases on actions against crime, which added even more press coverage of organised crime and created more demand for successful policies. By the start of the membership negotiation with the EU, the issues of crime had become so widely publicised a problem that any action of the government could and was interpreted in terms of success or failure depending on the viewpoint. To put it simply, the more the government identified and fought organised crime, the more the public and the EU became convinced of the magnitude of the problem, and demanded more action.

Chapter 7. Organised Crime and Bulgaria's Accession to the EU

7.1. Introduction

This chapter develops the discussion of Bulgaria's anti-crime policies from the perspective of its accession to the European Union. It reflects the issues identified by the previous chapter concerning Bulgaria's anti-crime policies, but looks at how these policies were guided by external factors and mainly the European Union's enlargement conditionality in the key years after 2004. The fight against organised crime now became a central area of monitoring for the Balkan states accessing the Union as this was seen as the area where member-state building through aid and conditionality was most needed. From an EU perspective the reform of the criminal justice system of Bulgaria was mainly a question of Bulgarian internal politics, and the role of the Union was mainly in providing expertise, technical support and membership incentive. But the fight against organised crime affected a growing number of institutions and areas of reform in Bulgaria, and this led to an even more intense EU monitoring of the issue in Bulgaria compared to other applicant countries. While internal factors have played a role in this politicisation of the organised crime problem, the influence of the European Union, although more indirect, was nevertheless crucial.

As earlier chapters argued the Justice and Home Affairs (JHA) *acquis* was an essential prerequisite for the process of enlargement and it became even more important in the second wave of Eastern enlargement to the Balkans. In the case of the Balkan states of Bulgaria and Romania *crime* and *corruption* became important areas of the membership negotiation process and problems in these policy areas prevented both countries from joining the EU in 2004. The EU had deliberately taken an ostensibly apolitical stance in its dealings with the applicant countries and their reform policies and had kept its influence at the level of expertise and technical assistance as discussed in chapters five and six. However, conditionality and monitoring, as well as indirect policy advice had a bigger impact beyond the technicalities of the anti-crime policies.

The discussion in this chapter focuses on this aspect of the EU's role in the development of Bulgaria's anti-crime policy. It discusses the conditionality and monitoring of Bulgaria's accession and their increasing focus on organised crime through a review of the European Commission's official opinions, expert reports and other official documents. The chapter then focuses on the case of the city of Rousse which was inspected by JHA experts prior to accession and explores interview data from interviews with representatives of branches of the regular police, border police and the courts. Finally the chapter looks at the period immediately before accession when Bulgaria was under pressure to deliver on its anti-crime policies in order to be allowed to join in 2007. The chapter closes on the accession and post-accession conditionality regarding the continuation of Bulgaria's fight against crime.

7.2. Bulgaria, the EU and the fight against crime

The following discussion is based on a comparison of the European Commission's official reports on Bulgaria's progress towards accession between 1997 and 2004.¹ Each of these reports contains a section on JHA and an evaluation of Bulgaria's criminal justice reforms and its fight against organised crime and corruption. This section progressively increases in size and the issues it covers. The first report in 1997 is very brief and identifies problems that Bulgaria has in the field, including the rise of local organised crime, but also acknowledges the start of criminal justice reform by the Kostov government. The report is rather brief on these issues but reveals one important controversial issue: it points out that Bulgaria has been included in the EU's visa regime due to attempts of Bulgarians to immigrate for work in Western Europe, and the country's territory being used for transit of other illegal immigrants and illegal drugs, and its demand that the state authorities do more to prevent this from happening despite the fact that, as the report acknowledges, the state suffers from 'severe resource shortages, has little experience of judicial cooperation and has only limited expertise in foreign legal systems'.²

¹ These reports are available online at <http://www.europe.bg>. This web site has also published other relevant documents such as the EU's position on Chapter 24 during its negotiation (between 2001-2004), and respectively Bulgaria's official position on the same chapter.

² European Commission, Commission Opinion on Bulgaria's application for membership of the European Union, COM/97/2008 final. Brussels: 15.07.1997, p.91.

Despite this acknowledgement of the lack of resources, EU funding for JHA related reform through PHARE did not start until 1999, and the process was, until then, exclusively funded by the Bulgarian budget. As the previous chapter identified, the government at the time had largely internalised the criminal justice reform and anti-crime policy, which it presented as necessary for the general economic and political reform of the country. From 1997 onwards Bulgarian governments began to prioritise EU requirements in reform and for JHA this initially involved asylum legislation, border controls and the fight against organised crime and drug trafficking.³ The intense activity of the Kostov's government in the JHA area in 1997-98 was praised in the Commission's report for 1998, which stated that: 'Bulgaria has made laudable progress in meeting the short-term priorities for the Accession Partnership (combating organised crime and border management) but more unremitting effort will be needed to comply with the *acquis*. Looking ahead, these efforts will have to be supplemented by determined action on two fronts to achieve medium-term objectives'.⁴ These objectives were legislation on asylum and foreign nationals and action on staffing and training to implement the new legislation. The final conclusion of the report's section on JHA did not contain any specific criticism of the policy on organised crime. The next report however devoted more space for analysis of the JHA-related activity of the Bulgarian institutions, and concluded that Bulgaria had made significant progress 'through in particular reinforcement of the legislative framework in the majority of sectors' but 'must from now on develop the methods and ensure the human and material resources, which are essential for the application of the *acquis*'.⁵ The report's final conclusion praised the

³ One of the major initiatives of Kostov's government, which affected every adult citizen, was the change of the Bulgarian identification documents and other internal regulations demanded by the EU but presented in the country as a necessary modernisation to remove Bulgaria from Schengen's visa regime. This did not happen until 2001 and even then the free travel of Bulgarians within the EU was policed by further regulation.

In 1997 Bulgaria did not have a huge problem with asylum seekers (their number was only 850 in 1995 in the height of the Yugoslav crisis), organised crime was mainly understood as small racketeering groups, and there were no substantial internal drug market. However, the closing down of the insurance/racketeering companies (discussed in previous chapter) might have led to its employees looking for new sources of income and some entered the illegal drug market. However, the drug market in Bulgaria is not big outside of the capital.

⁴ European Commission, Commission Opinion on Bulgaria's application for membership of the European Union, COM/97/2008 final. Brussels: 15.07.1997, p. 37.

⁵ The report lists the activities of the Bulgarian government regarding EU's requirements in the JHA area, and these are significant. Bulgaria has introduced visa regimes with countries which the EU requires a visa readmission agreements with almost all EU member states, as well as Hungary, Norway, the Czech Republic, Poland, Slovakia, Slovenia and Switzerland; it has demilitarised its border police, introduced new passports that cannot be forged, and 'is deploying modern technical

achievements in the area and recommended additional training for all services and further democratisation and transparency of the law enforcement bodies, in addition to improvement of the communication between the Ministry of the Interior and Ministry of Justice (called at the time Ministry of Justice and European Legal Integration), and a ‘strengthening of the professional associations in order to guarantee the independence of the judiciary’.⁶

The same year saw the implementation of the first (and only one for the year) PHARE project related to JHA, and it dedicated €9 500 000 to Institution Building Projects in the field of Justice and Home Affairs. These projects used the twinning method discussed in chapter five for enhancing the capacity of the Bulgarian Border Police, Ministry of the Interior, and the Ministry of Justice and European Legal Integration for implementation of the EU requirements ‘which means in particular addressing the requirements and recommendations of the Accession Partnership as well as the conclusions of the regular report of November 1998 on the progress of Bulgaria, of the Justice and Home Affairs experts mission report of May 1998 and of the follow-up mission of Mrs Jansen (January 1999).’⁷ The project funded secondments of European experts in all of the above institutions (for up to two years), which effectively means that EU experts influenced all subsequent legislative and institutional changes, personnel training and choice of technical equipment.

The section on JHA in the Commission’s report for 2000 was longer and more critical, which was partly linked to this bigger involvement of foreign experts. As the EU’s *acquis* in the JHA area was simultaneously growing, this translated into an increase in the scrutiny of Bulgarian compliance. The report acknowledges the progress and the continuation of reform but ‘not at such a significant pace as

means for investigation’ of serious crime: it has established an automated dactyloscopic identification system and is developing a national laboratory and data bank containing genetic information on criminals, it has established channels for cooperation internationally (and regionally), has set up a unit within the police to develop changes in the legislation, more anti-money laundering legislation, etc. See European Commission, 1999 Regular Report from the Commission on Bulgaria’s Progress towards Accession, pp. 49-52 [online] http://europe.bg/upload/docs/Regular_Report_1999_EN.pdf accessed 5/03/2009.

⁶ *Ibid*, p. 67.

⁷ Summary Fiche, Institution Building Projects in the field of Justice and Home Affairs, Sub-programme Number BG 9911 [online] http://ec.europa.eu/enlargement/fiche_projet/open_document_fp.cfm?do_id=27906 accessed 5/03/2009.

mentioned in the last report'.⁸ The criticisms ranged from the lack of a Personal Data Protection law (although an inter-ministerial working group was in process of drafting one) to specific aspects of the fight against organised crime, and particularly trafficking in human beings (and especially women, which the EU felt needed 'sustained attention'), the lack of a national information system in compliance with Schengen standards, and the level of training of the police to respect human rights (following reports of police brutality especially against minority groups, i.e. the Roma population) and countering economic crimes and money laundering, organised crime and corruption, inadequacies of police equipment, especially means of communication and motor vehicles; lack of strategy against drugs supply and demand reduction (important to create linkages between agencies); difficulties in handling incoming and outgoing requests for judicial cooperation, and the need for improvement of the judicial administrative capacity and cooperation between agencies.⁹ These criticisms come in between a list of achievements of previously set requirements (legislation, institutional, international cooperation and completion of international agreements). Finally, the report concluded that: 'Whilst progress has been made to meet some of the JHA priorities, those on strengthening the judiciary and developing a national strategy to combat corruption have not been met.'¹⁰

The report from 2001 listed the developments since the last report and noted the adoption of an anti-corruption strategy, the transformation of the Bulgarian border police into a 'modern agency with increasing focus on human resource policy'; the establishment of a Human Trafficking Task Force within the Ministry of the Interior, comprising representatives from different ministries and the judiciary, hence also addressing the criticism of the low level of cooperation between agencies; the negotiation of an agreement with Europol; establishing a Bureau of Financial Intelligence as a separate agency and enhancing the money laundering regulation (widening the scope of legal entities obliged to identify their clients in operations over €15 320); the establishment of an automated information system similar to

⁸ European Commission, 2000 Regular Report from the Commission on Bulgaria's Progress towards Accession [online] http://europe.bg/upload/docs/Regular_Report_2000_EN.pdf accessed 5/03/2009.

⁹ *Ibid.*, p.74-78.

¹⁰ *Ibid.*, p. 93 Strengthening the judiciary is understood as improving recruitment, training and equipment. With regards to the fight against organised crime, the final conclusion only mentions: 'Police and customs authorities reinforced their co-operation as regards the combat against *drugs trafficking*, however, in general the *co-ordination between law-enforcement bodies* needs improvement' (italics in original).

Schengen's system; the extension of international agreements to fight organised crime to more countries, and a number of other steps undertaken by the Bulgarian authorities in the JHA area.¹¹

The report's criticism mainly pointed at insufficient resources, outdated equipment and newly emerged legislative and institutional problems such as the lack of specific anti-trafficking law which makes the authorities use other legislative measures, which was apparently delaying the prosecution, and the emerging problem of overlapping tasks between the different branches of the police, and problems of perceived police corruption. According to the report, 'the Bulgarian Police Services are handicapped by a complicated organisational structure which results in a significant overlap of responsibilities (e.g. between the Criminal Police and the National Service to Combat Organised crime), services with unclear roles (e.g. the Gendarmerie) and lack of communication between different police forces (especially at local and national level)'.¹² The report concluded that: 'Overall, Bulgaria is quite well advanced in alignment in the areas of visa policy, border control, customs co-operation and judicial co-operation' and 'Whilst further progress has been made to meet some of the JHA priorities, that on strengthening the judiciary has not yet been met' and more needed to be done to upgrade the judiciary and law enforcement bodies through training and equipment, and better coordination, so that they could continue their fight against organised crime and corruption. At the same time, the PHARE programme funded six JHA projects for 2000 and 2001 to meet the above requirements.

The reports between 2001 and 2003 were published while Bulgaria was conducting negotiations on Chapter 24 on JHA. Bulgaria's position at the start of the negotiations was that it accepted and would apply in full the *acquis* in the Justice and Home Affairs field and 'does not consider it necessary to request any derogations and transitional periods'.¹³ Bulgaria presented its position on 33 pages listing all

¹¹ European Commission, '2001 Regular Report from the Commission on Bulgaria's Progress towards Accession', pp. 82-88 [online] http://europe.bg/upload/docs/Regular_Report_2001_EN accessed 5/03/2009.

¹² *Ibid.*, p. 86.

¹³ Negotiation Position of the Government of the Republic of Bulgaria on Chapter 24 'Justice and Home Affairs', CONF-BG 9/01, Conference on Accession to the European Union, Negotiation

legislative and institutional arrangements it had adopted to date in accordance to the JHA *acquis* based on the existing *acquis* as of 31 December 1999. On the basis of the data presented, the position concluded: ‘The Bulgarian Government proposes that the negotiations on this chapter be provisionally closed on the basis of the existing *acquis*. Should new elements of the *acquis* make it necessary, Bulgaria recognises the possibility of opening supplementary negotiations before the end of the Intergovernmental conference.’ The EU’s response was respectively of a similar size and reflected the EU’s acknowledgement of Bulgaria’s achievements ‘but a final assessment of the conformity of Bulgaria’s legislation and policies with the *acquis* and its implementation capacity can only be made at a later stage of the negotiations.’¹⁴ Furthermore, the EU proposed a safeguard clause (also used in the Central European states, Malta and Cyprus negotiations, under Article 39) which stated that ‘if six months prior to Bulgaria’s accession the Commission’s reports indicates that there are serious concerns regarding the implementation by Bulgaria of the commitments undertaken in this chapter, in particular judicial reform, the Commission shall take all necessary measures.’¹⁵

The EU position demanded more action in the JHA area by Bulgaria in the following areas:

- Further reform of the Judiciary – to ensure independence, ‘checks and balances’, enough funding for personnel and equipment, objectivity and transparency in appointments, provision of regular reports on the implementation of the reform strategy, and of ‘regular and detailed information on criminal investigation, prosecution and conviction rates in the areas of organised crime, corruption, drugs, human trafficking, and tax and financial crime.’¹⁶

Position of the Government of the Republic of Bulgaria on Chapter 24 ‘Justice and Home Affairs’, Brussels, 20 February 2001.

¹⁴ European Union Common Position, Replaces doc. 20896/01 CONF-BG 79/01, Conference on Accession to the European Union, Negotiation Position of the Government of the Republic of Bulgaria on Chapter 24 ‘Justice and Home Affairs’, Brussels, 20 February 2001. p. 46 [online] http://www.mfa.bg/bg/index.php?option=com_content&task=view&id=13270&lang=bg&Itemid=321 accessed 02/03/2009.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, p.43.

- Pursue reform in the pre-trial phase (discussed in chapter six) – to ensure efficiency and transparency, and to avoid overlap, prepare a Constitutional change in order to avoid the annulment of the reforms, simplify the criminal procedure to make serious crime investigation shorter; provide reports, funding for equipment and training.
- More minor amendments of JHA-related legislation on Asylum and Refugees Act, the Penal code, law on fraud, implementation of a National Strategy against Corruption and plan to implement a National Anti-Drug strategy, and provide funding for personnel and equipment of all relevant bodies involved.

The next two Regular Reports from 2002 and 2003 reflected the activities of Bulgaria as advised and demanded by the EU. The 2002 report acknowledged the ‘good progress’ on the legislative activity but identified the need for strengthening the implementation capacity.¹⁷ The report also noted the changes in the Penal Code which enhanced the definitions of serious crimes such as acts of terrorism, corruption, organised crime, trafficking in human beings, computer crimes, development, accumulation and use of chemical and biological weapons.¹⁸ As discussed in the previous chapter the amendments now defined the ‘organised criminal group’ and established penalties for the establishment, operation and participation in such groups, and criminalized conspiracy with regards to organised activities.¹⁹ The significance of this change will be discussed later in this chapter.

The report listed all the other activities undertaken by Bulgaria including the fight against terrorism, trafficking of human beings (especially women for prostitution), and the adoption of a national strategy against fraud and corruption, as well as a strategy against drugs. However, the report criticised the anti-crime strategy because it did not give enough attention to ‘the need to have an accountable, reliable, and

¹⁷ European Commission, 2002 Regular Report from the Commission on Bulgaria’s Progress towards Accession, pp.111-117 [online] http://europe.bg/upload/docs/Regular_Report_2002_EN.pdf accessed 5/03/2009.

¹⁸ This is the first time the issue of terrorism appears in the reports – Bulgaria had until then maintained that it did not have terrorist activities in its territory but has been criticised for not acknowledging the use of its territory by terrorists acting abroad.

¹⁹ Article 321(1-3) of the Bulgaria’s Penal Code, State Gazette, issue 92, 2002. The penalty is 5 to 15 years for setting up an organised crime group and 3 to 10 for participation in an organised crime group.

fully-coordinated police organisation'.²⁰ It suggested setting up a national Contact Point for police cooperation and the need to regulate the operation of foreign police officials in Bulgaria. It was also critical of the existing statistical instruments for measuring crime, as well as the lack of modern methods of investigation of technical crime and the low level of forensic methods of investigation. The report paid special attention to human trafficking and claims that: 'Existing figures for arrests of traffickers are low and sanctions are weakly implemented, especially when it comes to court cases and sentences.'²¹ Furthermore, the report suggested removing the over-complicated organisational structures in the law enforcement services and better cooperation and interaction. In its final conclusion, the report states: 'Overall, Accession Partnership priorities in the area of justice and home affairs have been partially met. With the exception of the adoption of the strategy on combating organised crime, implementation of the measures under the Action Plan is largely on track.'²²

The following report (published in 2003) noted (amongst a long list of other JHA activities) the adoption of a National Strategy for Counteracting Crime 2003-2005 by the Council of Ministers, and the adoption of an Action Plan for its Implementation, both of which cover the prevention of corruption, terrorism and organised crime, divided into short-term, medium term and long-term actions.²³ Bulgaria also adopted a Unified Information System for Combating Crime (including penal proceedings and enforcement of sentences) to facilitate the coordination between law enforcement bodies. Bulgaria has also a new National Drugs Strategy 2003-2008 in line with the EU drugs strategy 2000-2004.²⁴ In its final conclusion the report acknowledges: 'The new legislation adopted in the areas of data protection, visa, migration, asylum and money laundering almost completed alignment with the *acquis*. Substantial further efforts are needed to further strengthen the judicial

²⁰ EC 2002 Report, *op.cit.*, p. 114

²¹ *Ibid.*

²² *Ibid.*, p.145.

²³ European Commission, 2003 Regular Report from the Commission on Bulgaria's Progress towards Accession', pp.104-113 [online] http://europe.bg/upload/docs/Regular_Report_2003_EN accessed 5/03/2009.

²⁴ *Ibid.*, p. 108.

system, through a continuation of the reforms. Particular attention should be given to combating drugs and illegal migration.’²⁵

On the eve of the first accession of former communist countries from CEE, Bulgaria was highly praised for its achievements. The report of the European Commission recognized the existence of a functioning market economy and democratic institutions – the two main conditions for EU membership. However Bulgaria, together with Romania, was then left outside because of what the European Commission perceived as a negative record on crime, weak criminal justice institutions and corruption, despite the analysis in the earlier reports. According to the 2004 Report on Bulgaria’s Progress towards Accession, all the areas covered by JHA had been developed by the Bulgarian authorities but many had ‘room for improvement’, and the area of crime fighting was still problematic:

The fight against organised crime and all forms of trafficking, including of human beings, remains an area of major concern. Despite the ongoing implementation of a second national crime strategy, the National Service to Combat Organised Crime (NSCOC) is not in a position to effectively address the situation and does not have the means to act efficiently in the absence of clear rules on the possibilities to use undercover investigations. There is significant room for improvement as regards the cooperation with other law enforcement bodies. The flaws in the pre-trial investigation phase partly explain the relative lack of success in the fight against organised crime syndicates. Bulgaria should urgently put in place an efficient witness protection scheme. Bulgaria is party to the major international agreements in the area of the fight against terrorism. It has ratified the second additional protocol to the Council of Europe Convention on Mutual Legal Assistance in Criminal Matters, but needs to review its Penal Procedure Code in order to introduce the concepts of

²⁵ *Ibid*, p.127. The Report also notes that although there are a number of files submitted to the public prosecutor there are still no convictions for money laundering.

joint investigation teams, trans-border hot pursuit, controlled deliveries, audio and Video conferences, and interception of telecommunications.²⁶

The report concluded that although Bulgaria had completed its negotiations on Chapter 24 JHA and had covered almost all areas of legislation which that chapter required, progress in the JHA area was delayed by the problems in the judicial reform and the fight against crime and corruption. Finally, the Commission advised that

In order to be ready for membership, urgent attention should be paid to the capacity of the judiciary and the law enforcement agencies and to inter-agency cooperation in order to correctly implement the *acquis* in this area. Due attention and adequate resources should be given to the full and timely implementation of the main strategies and action plans in the area of justice and home affairs, in particular as regards judicial reform, including the reform of the pre-trial phase, and to the fight against organised crime. Their full and timely implementation, together with the entry into force of the planned amendments to the legislation on the penal procedure, legal aid, asylum, mediation and forfeiture of criminal assets should allow addressing the bulk of the issues covered in this chapter.²⁷

In its communication to the European Parliament, the Commission pointed out that ‘Bulgaria and Romania are an integral part of this enlargement process which was launched in 1997..[and] the EU’s objective is to welcome both countries in January 2007 as members, if they are ready.’ To be ‘ready’ Bulgaria had to cover some more technicalities and to ‘to press ahead and dedicate adequate resources to fundamental reforms of the police and of the judiciary, including the reform of the pre-trial phase and the implementation of the strategies against crime.’²⁸

²⁶ Commission of the European Communities, 2004 Regular Report on Bulgaria’s Progress towards Accession, Brussels, 6.10.2004, SEC(2004) 1199, p.121 [online] http://europe.bg/upload/docs/Regular_Report_2004_EN.pdf accessed 05/03/2009.

²⁷ *Ibid*, p.123.

²⁸ Commission of the European Communities, Communication from the Commission to the Council and to the European Parliament Strategy Paper of The European Commission on Progress in the Enlargement Process, Brussels, 6.10.2004, COM(2004) 657 final, p.12 [online] <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0657:FIN:EN:PDF> accessed 5/03/2009.

Following this report and the completion of Chapter 24 negotiations, Bulgarian law enforcement authorities now received another blow from a very critical JHA report commissioned by the EU. According to Interior Ministry's Secretary Boyko Borisov, the information from which the conclusions of the report were drawn was out-of-date and did not cover all of the activities that the Bulgarian authorities had undertaken.²⁹ According to Borisov all the legislation had been adopted although not all had been implemented but work on this continued together with foreign experts working with the Bulgarian Ministry of the Interior.³⁰ According to the media reports Borisov had also pointed out that Bulgaria's Interior Ministry had achieved full integration with the EU and NATO, and was their most reliable partner in the Balkans, and its Border Police had been praised by US, European and Russian special services, as well as the European Commission. In an 'anti-report' action Borisov also invited the ambassadors of Germany and the UK to meet and discuss the conclusions of the EU report and seek support in the government's policy against crime and corruption.³¹ But such claims had little impact and, after further negotiations and meetings, Borisov changed his mind and accepted the criticisms.³²

The problems with the fight against organised crime and criminal justice reform was thus cited as one of the main reasons why Bulgaria's accession to the EU was postponed until 2007. The EU also raised similar criticisms to other Balkan states. The other Balkan candidate Romania was criticised for problems with corruption and also refused accession in 2004, and Croatia was pressured to arrest a war criminal in

²⁹ The JHA conclusions of the EU report are based on a commissioned inspection of JHA area in Bulgaria which was performed by the British reporter Byron Davis and five other experts who visited the country between 7-10 June 2004. His report on 'Functioning of Police, organized crime and drugs' criticises the weakness of Bulgaria in fighting these crimes due to shortage of equipment and lack of infrastructure. According to Borisov, it seemed that Davis had contacted lower-level officials instead of the chiefs and his report lacked up-to-date factual information. Sofia News Agency, 'Bulgaria Objects Chastising EU Report', Novinite.Com, 21 August 2004 [online] www.novinite.com/view_news.php?id=38327 accessed 6/03/2009.

³⁰ This includes a team from Scotland Yard who visited Bulgaria to review the EU monitoring report, which criticized the level of law enforcement in the country. Sofia News Agency, 'Harsh EU Report Brings Scotland Yard to Bulgaria', Novinite.Com, 23 August 2004 [online] <http://www.novinite.com/newsletter/print.php?id=38398> accessed 6/03/2009.

³¹ Sofia News Agency, 'Bulgaria Fit to Take on EU Outer Border Vigil', Novinite.Com, 6 September 2004 [online] www.novinite.com/view_news.php?id=38919 accessed 6/03/2009.

³² Sofia News Agency, 'Harsh EU Report Brings Scotland Yard to Bulgaria', 23 August 2004 http://www.novinite.com/view_news.php?id=38398 accessed 6/03/2009.

order to proceed with accession talks.³³ This was not expected by the Bulgarian political elite which had imagined that the legislative and institutional changes met EU demands. Bulgaria had to comply with all requirements presented in the European Commission's reports and yet find its own design of the reforms with the partial help of EU experts. Given the difficulties in developing and passing new laws and establishing new institutions and rules, the Bulgarian officials did not expect that such an unclear and problematic area such as JHA would be used to stop the country from accession.

7.3. Pre-accession's Focus on Organised Crime: 2005-2006

We have seen that throughout the development of Bulgaria's anti-crime policy the EU and external actors took formally an apolitical stance. The EU's reports provided the general framework of development of Bulgaria's anti-crime and criminal justice policy through its conditionality and explicit requirement for deepening the reform and adopting the JHA *acquis* before accession. The EU and other external actors were engaged not only in formulating this general framework but also its specific application through direct participation at an institutional level. EU policy led to a constant presence of Western experts in the Bulgarian institutions who were providing advice, support and funding. But the EU refrained from giving specific guidelines for the re-organisation of the institutions although in practice EU experts have participated in the actual formulation of legislation and institutional structures. The foreign involvement was not limited to EU experts only but involved a whole framework of interested foreign parties (embassies, NGOs, governmental officials on visits, etc).³⁴ However, this framework rarely engaged directly with the political side of the reform. In the words of experts at a JHA conference in England, the SEE countries had to achieve the political will by themselves.³⁵

³³ General Ante Gotovina, who was captured later in 2005 but in Tenerife, in the Canary Islands and not in Croatia. G.Partos, 'Long road from Krajina to captivity', *BBC News* (UK), 8 December 2005 [online] <http://news.bbc.co.uk/1/hi/world/europe/4510542.stm> accessed 29/06/2009.

³⁴ One more example is the review of Bulgaria's administrative justice system completed in 2002. This review was the result of a Memorandum signed by the Ministry of Justice, the Supreme Administrative Court, the UNDP Democratic Governance Trust and the British Embassy in Sofia and has, as its main objective, the establishment of a modern and effective system of administrative justice.

³⁵ This opinion was expressed at a Wilton Park conference dedicated to JHA issues (at which the author was present) from a Western official who pointed out to the delegates from South-Eastern

This was the stance of the EU experts as well. Chapter four identified how the policy of the EU involved setting conditions for membership and provision of aid on a practical level, which was preferred to engagement with politics. In this way the EU remained officially not connected to the politics behind the policy and the criminal justice reform as a whole. However, their influence, along with the need to adopt the JHA *acquis* and the provisions of other international agreements, meant that the actual choices of policy in Bulgaria were limited. The most important limitation was the priority given by external advisors to legislative-institutional reform instead of the development of alternative or supplementary measures to the punitive ones focused on organised crime only. It must be noted that the Strategy on crime adopted by Kostov's government in 1997 did provide for a wide range of other (more social) policies to diminish crime but the EU's monitoring did not include these in its subsequent evaluations.

The previous section of this chapter revealed a complex and constantly changing agenda for JHA for Bulgaria, which was constantly trying to catch up with the new demands. A big part of these policies were funded by the Bulgarian state budget and also took substantial resources in terms of political time, debates and drafting and re-drafting legislation and reforms. The EU was also increasing its funding for JHA policies as Table 7.1 below shows. The projects related to JHA (and directly or indirectly linked to the fight against organised crime) used a substantial 20% of the PHARE funding between 1999 and 2007, which makes them the most expensive projects in the programme (given their more modest percentage of the overall number of projects). The logic and the immediate results of these projects in Bulgaria followed the general agenda of institution building for all applicants as discussed in chapter five, which mainly focused on the purchase of EU equipment, provision of training by EU experts and organisation of seminars and working groups with EU law enforcement representatives.

Europe: 'You have to take the things into your own hands and tell the international community what to do'. Home Affairs Agenda for South-Eastern Europe Conference, Wilton Park, 22-26 July 2002.

**Table 7.1. JHA-related projects in the PHARE Programme for Bulgaria
between 1998 and 2007 ³⁶**

| Year | Total Projects | JHA related projects | JHA as percent of projects | JHA as a % of total EU financing for the year³⁷ |
|--------------|-----------------------|-----------------------------|-----------------------------------|--|
| 2007 | 39 | 13 | 33% | € 8 355 000, or 26% |
| 2006 | 67 | 13 | 19% | € 65 322 000 or 33.9% |
| 2005 | 49 | 10 | 20% | € 39 965 000 or 22.8% |
| 2004 | 47 | 10 | 16% | € 33 914 000 or 19% |
| 2003 | 45 | 5 | 11% | €13 850 000 + € 7 708 000 for customs capacity for financial control = 20.6% |
| 2002 | 44 | 9 | 20% | €24 900 000 or 26% |
| 2001 | 32 | 3 | 9% | € 4 275 000 or 5% |
| 2000 | 44 | 3 | 6.8% | € 13 000 000 or 20% |
| 1999 | 11 | 1 | 9% | € 9 500 000 or 23.7% |
| 1998 | 12 | 0 | 0 | - |
| Total | 390 | 67 | 17% | € 213 081 000 21.8 % average |

Effectively, any criticisms of Bulgaria's policy might therefore also be seen as an indirect criticism of EU policy as it was constantly involved in the development and funding of change in Bulgaria. On the other hand, the Bulgarian authorities were rarely openly critical of the EU's involvement, and contributed to and then followed closely the results of its monitoring process, largely internalising the failures of policy. The sites of conflict were mainly internal (as discussed in the previous Chapter 6), at the level of institutional and inter-institutional level, as well as occasionally political but the latter conflicts were also limited to disagreements over technicalities and not the overall direction of the reform – EU membership was the ultimate aim for all political parties. Thus Bulgaria next engaged in an even more

³⁶ Data is from the PHARE fiches archived on the European Commission's web site. Between 2002 and 2007 these projects fall under the JHA category. In the years before that JHA-related projects are classified under Strengthening Public Administration (2001-2) or Strengthening Rule of Law (2000) Some of the projects counted as JHA-related have been placed in different categories but they nevertheless have a link with the fight against organised crime (for example, fraud projects under Public Finance). The fiches are available online at [http://ec.europa.eu/enlargement/fiche_projet/index.cfm?page=15651&c=BULGARIA\(ARCHIVED\)](http://ec.europa.eu/enlargement/fiche_projet/index.cfm?page=15651&c=BULGARIA(ARCHIVED)) accessed 30/01/2009.

³⁷ The data is taken from the PHARE financial memorandums signed between the European Commission and Bulgaria for each year, which are also available from the abovementioned website.

extensive policy in the period after being denied entry with the Central European states, and between 2004 and 2007 it focused on further judicial reform and police reform with the view of strengthening their capacity to fight organised crime.

In 2005 and 2006 the European Commission issued two Comprehensive Monitoring Reports on Bulgaria's state of preparedness for EU membership instead of regular reports, and both had a more explicit focus on the fight against organised crime. The organised crime focus was also helped by a series of high profile contract killings in the capital in September and October 2005. These killings coincided with the 2005 Report of the Commission, and contributed to the election of Borisov (who had become a symbol of the fight against organised crime) as a mayor of Sofia in November 2005. The contract killings were later cited as the main evidence of organised crime in Bulgaria.³⁸ This focus, however, intensified pressure at the top in Bulgaria, and it also had continued consequences below as will now be briefly shown.

7.4. Pre-accession Evaluation: A Case study of the city of Rousse

The following short case study of the city of Rousse was chosen for several reasons. First, it is the author's hometown and therefore it was easier to make connections with local officials. Secondly, Rousse is a city with a population of around 200 000 (fourth largest city in Bulgaria), it is the main big city in Northern Bulgaria. It is a major administrative centre, situated on a border and has all of the relevant policing and judicial units, which have experienced the process of centralisation and re-distribution of power in the criminal justice and security sector. Rousse has both a regular police service with an organised crime department and a border police service which also polices forms of organised criminality. The city hosts both a regional and a district court (in the same building). Finally, the uniqueness of the case of Rousse is that it is on the border between Bulgaria and Romania both of which joined the EU in 2007. Therefore the process of local administrative reform had to be coordinated with national processes such as the establishment of new forms

³⁸ As the previous chapter discussed these killings are linked to territorial war between gangs and may be linked to Borisov's engagement in a more hard-line policy against organised crime, which disturbed illegal markets and led to their re-distribution via contract killings.

of contact with the Romanian side, especially in terms of the cooperation between the two border posts.

The discussion of this case is based on interviews with local officials from the criminal justice system:

1. Regular (or territorial) Police: the chief of the regional police office in Rousse, his secretary and the chief of the local anti organised crime cell;
2. Border police: the chief of the border police stationed in Rousse;
3. Court: a criminal judge from the district court based in Rousse and a judge from Rousse's regional court dealing with civil cases.

The results from these interviews give us an idea of the impact of the reforms on the local level and the interaction between local and national branches of the system. The interviews aimed to reveal more details about the pre-accession monitoring of Rousse.

Regular Police

The background information on the police was provided by a preliminary interview with Kalina, the secretary to the Chief of Rousse District Police Department (Oblastna Direkcia Policia Ruse).³⁹ The local police administration has a regional department and six sub-divisions, two of which are in Rousse and police departments in Rousse's residential quarters. The District Police made significant progress before joining the EU, including the establishment of a 24-hour information centre (tel. number 113) which included access to medical emergency, fire alarm, police, and prosecutor; the successful introduction of a new system of personal documents which would soon include biometric data; the introduction of logging systems and cameras. All of these innovations required substantial investments in security and the fight against crime but they have created problems due to the need to use local funding while awaiting European funds.⁴⁰

³⁹ The interview was conducted on 02/01/2008 in Rousse.

⁴⁰ Kalina stated that it takes a long time for the EU money to come through and yet the EU demands that this money is used very quickly.

However, according to Kalina, the police themselves shared the view that they were not a protected institution in the transition, and that there was no strategy for their future.⁴¹ They see issues involving local corruption linked to use of public funds, linked to elected officials or rich businessmen but have no central backing to investigate. They criticise the institutional reforms and especially the newly created Security Service which was taken out of the control of the Ministry of the Interior, which leads to duplication of tasks and jurisdictions. There is some appreciation of the recent innovations such as the law on the use of special investigative techniques and the enhanced role of the prosecutor, who coordinates the investigation process, are also effective as they give a legal form to the process. They introduce the case to court and therefore give guidelines for the prior investigation process. However these positives are negated by fear and nihilism in the police forces. According to Kalina, there is even fear from some members of the municipal council who have asked the police to withhold information.

Perhaps because of these uncertainties the police themselves have both internalised some of the problems and introduced tougher internal discipline, and attempted to overcome the criticisms by passing on the blame. Some of these issues became obvious during the interviews with the Chief of the District Police Sveroslav Parvanov and his subordinate, the Chief of the Anti-organised Crime Squad at the District Police, Javor Jankov.⁴² The information they gave was relevant to the study of enlargement and crime as their District Police department was one of the five (out of 29 District departments in the country), which was checked by EU experts in the pre-enlargement inspection in 2006. Parvanov's opinion was that the EU assessors came unprepared – they were not familiar with the normative base (legislation) of the police in Bulgaria. He dismissed them as: 'Teachers who can't teach'. There were

⁴¹ Kalina compared the Bulgarian case to Romania and concluded that the problem of crime in Bulgaria was due to destruction of the old security services whereas Romania left their security services, *Securitate*, relatively untouched. She implied that the people who lost their jobs with the police joined the ranks of organised crime via the security business, and quoted: 'A cop is cop even when asleep'.

⁴² The interview was conducted on 10/01/2008 at the Police Department in Rousse. Coming into the police building for the interviews was an interesting experience: there was very strict control and the people on reception showed great awe of their boss, and hierarchy in the department in general – it looked very military. Sveroslav Parvanov, has held the position of chief of District Police Rousse for about two years, is an intimidating man. There was an impression that his employees were afraid of him. Javor Jankov was measuring his answers in the presence of his boss. Both asked for the questions written and sent to them in advance, and at the end of the interview they promised to send answers via e-mail.

two assessors: one was apparently a former UN ‘blue helmet’ (i.e. a former member of UN peacekeeping forces) and, according to Parvanov, did not know much about Bulgaria, and the other had more information as he had been living in Bulgaria and was married to a Bulgarian. Parvanov shared the view that the Bulgarian police were good: he had been on two training schools organised by the FBI in Hungary and in Roswell, New Mexico, along with other policemen from non-EU members and he came back proud that he was a Bulgarian policeman. There was good, applicable, experience, he says, but ‘what we do they do with a lot of money’.⁴³ Despite his good opinion of the Bulgarian policeman, this opinion did not extend to the central authorities in Sofia – he implied manipulation of crime data by them and complained about the new changes in the legislation, which limit his right to appoint and dismiss his subordinates.

As far as the problem of organised crime was concerned, Javor Jankov, the Chief of the anti-organised crime squad asserted that: ‘There is no organised crime, there is group crime’ and the latest definitions adopted in law do not allow the police to police this group crime effectively.⁴⁴ Furthermore, according to Parvanov and Jankov, there is no nation-wide organised crime, and not real organised crime in Rousse (e.g. there have been no contract killings in Rousse since 2001). The experts from the EU who came to Rousse were surprised and asked what the police had done to the town to make it look so safe and secure and if this was just to show off during the monitoring process. The city has fewer drugs than Sofia and is clean from heroin, which Jankov attributed more hesitantly to the police role.⁴⁵ In Rousse there are no kidnappings, rackets, blackmail, hoax calls, no armed robberies (at least not ‘real ones’ – they explain that there is a wrong interpretation of armed robbery when the complainant says the criminal had a weapon when they hadn’t have one).

⁴³ The Bulgarian policemen have the lowest salaries compared to other EU police forces.

⁴⁴ Art. 321 of the new Penal Code criminalizes organisation and membership in criminal groups in order to facilitate and prioritise police investigations of organised crime over ordinary crime, as discussed in previous chapter.

⁴⁵ The police data and conclusions come not from under cover operations but from the local psychiatric unit. Jankov points out that recently there were only 19 addicts in Rousse have asked for methadone/substitute which means their supply of heroin has been cut off.

Their views of the recent legislative changes were that they did not resolve the problems and were mainly ‘gimmicks’.⁴⁶ In order to remove the examining magistrates there had to be changes in the Constitution, which made the process very complicated and over-politicised. The introduction of investigators in the police while preserving the independent investigation service and its investigative jurisdiction over a tiny number of crimes (see previous chapter) was in fact closing down the latter as the effect of the change made the service useless. This was done to fight corruption but was in fact ‘beating about the bush’ (going around the problem). The laws were not the only impediment. There is a complicated procedure for information requests.⁴⁷ The Southeast European Cooperative Initiative (SECI) on regional anti-crime cooperation centre in Bucharest, Romania (which is only a one hour drive away from Rousse) was useful but in fact they have only used them in 2-3 cases.⁴⁸ There should be a unified database of the information from Ministry of the Interior – Courts – Prosecutors (with 24 hour access), which they think is not going to happen. The police are generally annoyed with the changes in the Criminal Procedure for ‘getting the courts in’, meaning the need to get a judge present at interrogations. Sometimes they need a judge in the middle of the night and can’t find one. Furthermore, collecting evidence is problematic as some crimes are very difficult to prove and the prosecutors keep an eye on the procedure.⁴⁹ According to both interviewees there is lack of trust, it is difficult to work with the judges and there is strong defence for defendants: ‘There are many barristers for defendants but no defence for the victim.’ Finally, the positive development for the police is the fact that they are now there to defend these victims and ‘do good’ for the community.⁵⁰

⁴⁶ The use of the term here means that they see most activities as mainly demonstrative.

⁴⁷ For example, international requests take time and have to go through many levels. In order to get information about something in the local police department in Romania on other side of the river, they have to refer to Sofia, who then refer to Bucharest who then refer to the relevant place, etc.

⁴⁸ The interviewees shared the view that the international liaison officers know a lot and are useful. On the other hand, it is easy to work with some countries and not easy with others. Sometimes it is complicated: there was a case in Germany which was resolved via communication between Rousse-Turkey-UK. On balance, the normative framework for cases within EU is still too complicated, e.g. one thing which is a piece of evidence in one country may not be in another. However, they share the opinion that there are too many organisations which leads to spilling of information. The informal, personal, connections are best, and there should be more (and more frequent) seminars; access to information should be eased; and the databases should be de-centralised.

⁴⁹ One example was presented by a Bulgarian lawyer on a TV programme: in some cases of captured lorries and other professional drivers who had crossed the border with drugs in their vehicles, the only evidence of guilt was the drugs found but no evidence that the drivers had put them there and hence their guilt was impossible to prove.

⁵⁰ Now his idea of the role of the police is to provide a public service, to secure public order. To exemplify this, Purvanov mentioned an example with a road policeman who now helped an old man

Border Police

The meeting with Chief of Border Police in Rousse, Krasimir Kornadjev was very different.⁵¹ There was an obvious rivalry between the two departments and the Border Police appears more important, having more material and financial resources than the district police. The Border Police had received a lot of attention and funding in the enlargement period as discussed in the previous chapters. There are two types of borders in the EU: internal EU borders and external EU borders. Since joining the EU, Regulation 562 of the Schengen border code is in force for Bulgaria and the border in Rousse had become internal (it is between Bulgaria and Romania).⁵² Despite the fact that it is not an external border, it has been a subject of pre-accession inspections conducted under Schengen even though the Schengen agreement and *acquis* does not apply automatically upon accession but is a subject of an additional protocol with the EU Council. Therefore the Border Police still carries out identification control.⁵³

Kornadjev described the current situation with the border police in Bulgaria, and his branch in Rousse. Bulgaria has a strategy for integrated border management of 2 stages: pre-EU-accession and pre-Schengen-accession; it includes all borders; the internal borders have no customs service but obligatory border crossing control. Apart from customs and other types of control (e.g. veterinary control, phyto-sanitary control collecting taxes such as road tax, etc.), the Border Police has a policy of integration, building an information network, teamwork. The Border Police in Rousse have set up a contact bureau in Giurgiu (the Romanian town across the

cross the street instead of using his truncheon to stop the traffic. He also pointed out the usefulness of the policemen and police cars which have been used in the clearing of roads from the snow that winter and helping with the emergency situation in the region due to unexpected snowfall and inability of the municipality to cope alone.

⁵¹ The interview was conducted on 11/01/2007 in Rousse.

⁵² Bulgaria has two internal borders: with Romania and Greece, and three external with Serbia, Macedonia, and the Black Sea. There are also two types of criteria for border crossing: EU citizens and non-EU nationals; difference is that EU-citizens don't leave their data in the system.

⁵³ Ironically, as Kornadjev points out, from 1 January 2007 when Bulgaria joined the EU, there was an increase of the use of falsified documents mainly by citizens of Moldova who go through Romania and Bulgaria to Greece, and Kurds going through Bulgaria and Romania to Western Europe. They came in with real documents and got them falsified once inside which circumvented the external border's control. Since Bulgaria and Romania joined the EU, the people who were trying to cross the border illegally (trafficking or crossing green border) stopped using the services of traffickers. The crime is by consent, Kornadjev states, including women immigrating for prostitution. The use of forged documents has made some equipment obsolete such as gas analysers which catch trafficked human beings by detecting breathing.

border) for coordination and exchange of information which includes executive and judicial powers. Both sides have joint cross-border points which work on the basis of one stopping (people who cross are checked only on the side they are leaving). They have joint patrols by land and by sea/river and police borders crossers inside the country by mobile patrols.⁵⁴ Most of the new developments have been transposed mainly from Germany via twinning projects. The projects have also provided the latest technical equipment, including cars with off road capability, thermo-visual cameras, apparatus for night time vision, etc.

The border police in Rousse have a few ongoing projects aimed at its further restructuring and compliance with Schengen. When EU experts came to monitor the progress they were given presentations, and they went and talked to employees. However, there have been some problems and lack of trust. At the time of the last visit the border police had not seized any heroin and the examiners thought this was suspicious. Kornadjev's opinion on the monitoring by EU experts was that 'They don't know anything.' They only check factual data: the number of people employed, the availability of equipment, framework of cooperation with the Romanian neighbours.

Kornadjev believed that these cross border points are important for the fight against organised crime and the external borders are a priority.⁵⁵ The border police understands organised crime as people trafficking, illegal immigration, drugs, weapons trafficking – there is a very strict control on the external border and a lot of equipment has been purchased for policing the 'green border'.⁵⁶ Kornadjev pointed out that they have more equipment than the territorial police and, on some occasions,

⁵⁴ Kornadjev stated that the introduction of these Mobile Groups for Control and Coordination added to, but also clashed with, the tasks to the policing bodies (existing territorial and border police). They are groups who police the external traffic internally and work both with Ministry of the Interior and Ministry of Finance. The introduction of these groups moves the protection of borders to the interior; and are part of the so-called compensatory measures diminishing border controls within the EU. Kornadjev pointed out that these were introduced by Germany after it was realised that the removal of border controls created problems and the German authorities went back to restore this type of post crossing control because they saw it was necessary. Kornadjev pointed out that Bulgaria has had similar problems which showed the importance of collecting information on crossing borders. He mentioned a scandal when on one occasion the National Service to Combat Organised Crime, the Social Security services and the prosecution had no information that someone they were investigating had actually left the country.

⁵⁵ Their information system linked with Schengen's Information System (SIS) will be used by border police, territorial police, regional police, etc.

⁵⁶ 'Green border' is used as a term for the frontier without border control.

the District police chief had asked him to borrow some equipment for a publicity demonstration in town.⁵⁷ On the issue of international cooperation on the fight against organised crime, Kornajev indicated that there is now wider cooperation with Romania, some with Interpol but not so much with Europol. He said that some of his colleagues use SECI on drug trafficking and some use of the new structure Frontex.⁵⁸ As far as the level of the Bulgarian border control is concerned, he stated: ‘We will be in Schengen in 2011 – everything is political’ meaning that Bulgaria had done everything that was required but the decision would be arbitrary.

*Courts*⁵⁹

From the point of view of the practitioners in the justice system in Rousse, a strong sense emerged that the new legislation is making the system more inefficient. According to the two judges from Rousse who were interviewed, the police are not well trained to investigate and therefore the introduction of preliminary investigators (*doznateli*) who are lawyers is a good development but their number is not enough. For Rousse they are only 30, and there are about 30 prosecutors too. Therefore preliminary investigators and the prosecution are overloaded with work, tired, and ineffective. Hence their work is not always of good quality and when the cases go to court the judge considers that the charges do not rest on enough evidence. Often the judge believes there could be more evidence collected, and they collect it themselves and even question witnesses (i.e. do the job of the police). Since the change of the Criminal procedure law the police investigate in almost all cases and they have not been very effective especially when it comes to economic crimes – they get very stressed themselves and, in the end, cannot perform on the job. Therefore the problem is in the preliminary investigation, i.e. the police: evidence could be collected so that a crime is proved and they can be collected in a way that makes it impossible to prove and there is use of illegal means by the police.

⁵⁷ I asked if they worked on the basis of preliminary intelligence, i.e. signals, especially on drugs, to what extent this equipment is in fact used, and he did not comment.

⁵⁸ European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, in Warsaw, Poland – the first agency to be based in one of the new member states from Eastern Europe in 2004 (operational since 2005).

⁵⁹ Interviewees: Velizar, a criminal judge at Rousse regional court and Darin, a judge on civil cases (surnames were kept private). The interviews were conducted on 7/01/2007 and 8/01/2007. One of the judges has proved further information by e-mail.

On the other hand the data provided by one of the judges shows a very small problem with organised crime in Rousse. In 2005 there had been one organised crime trial of 13 defendants, all of them from the former wrestlers association (called SIK), all of whom received prison sentences of 91 years in total. In 2006 there were two organised crime trials: one with 8 defendants who received one year in prison each, and the second one was against three defendants who got a prison sentence of 11 years and 8 months in total. There were no trials for 2007, which the judge explained by the fact that all organised crime figures were now in prison. Those two cases put away the organised crime contingent which had controlled the relatively small illegal market in town. Interestingly, the judge believed that the delay of these sentences was caused by the corruption of the prosecution.

The judges were critical of the reforms. The judicial reform was described as ‘populist’ because in their opinion the judiciary was independent before but the last party put their people at the key places in the judicial system. That is why they are still ‘in government even after losing the elections’. They have their people at the key places, which one of the judges described as a ‘criminal privatisation of the institutions’. He was of opinion that the aim is to not have a strong justice system – there is an imitation of action and politicisation of the judicial power and subduing it to the government. There is no real judicial reform – they have not reformed anything – it is used to distract attention from other things.⁶⁰

7.5. Evaluating Bulgaria’s Anti-Crime policy

The final stage of EU’s conditionality concerning Bulgaria’s anti-crime policy was exercised in the last year before accession. In 2006, six months before it was due to give a final approval for Bulgaria’s accession, the Commission invoked the safeguard clause discussed earlier in this chapter, which allowed it to take necessary measures if it has ‘serious concerns regarding the implementation by Bulgaria of the commitments undertaken in this chapter, in particular judicial reform.’ The

⁶⁰ The judges shared the opinion that there is a problem with crime although one pointed out that the organised crime is very ‘chaotic’. Even when it comes to contract killings it is not clear if they are organised crime. One of the judges mentioned an interesting case of series of killings which turned out to be perpetrated by a couple of young people who killed in an attempt to get noticed and hired as contract killers.

Commission threatened to postpone accession if Bulgaria did not show more results in its judicial reform and the fight against organised crime.⁶¹

The decision of the European Commission was based on the process of evaluation of the state of Bulgarian law enforcement. The Commission posted the German police expert Klaus Jansen on a one-week mission in Bulgaria to investigate the state of organised crime in Bulgaria and report on anti-crime policy and criminal justice in the country.⁶² His report was published in February 2006 and expressed more criticism of the Bulgarian institutions. The basis of the report was 21 meetings with law enforcement officials and the prosecution, compared to media reports on the topic, which, according to the report, presented discrepancies between the police information and reality, as well public opinion.⁶³

On the positive side, according to the Klaus Jansen's report, all officials interviewed were of the opinion that the new Criminal Code would have a great impact on the fight against crime such as witness protection, use of under-cover agents, controlled deliveries, special investigation means. Klaus Jansen was even surprised at the little need for training of policemen on how to use the above and the reason for this is that these techniques have been used since 1997 and the police were already familiar with them. The difference now was that the information collected by the police could be used in court. According to the police, whom the report cites, the problems came from the lawyers of criminals who may challenge the use of evidence, and also the fact that one cannot secure convictions only on the basis of evidence from anonymous witnesses or undercover agents.

The report then goes into a deeper analysis of the anti-crime policy developed by Bulgaria. The changes in pre-trial investigation and the concentration of investigative

⁶¹ See for example Commission of the European Communities, Communication From The Commission to the Council and to the European Parliament, Strategy Paper of the European Commission on Progress in the Enlargement Process, Com(2004) 657 Final, Brussels, 6.10.2004 [online] http://ec.europa.eu/bulgaria/documents/abc/strategy-paper-en-2004_en.pdf accessed 27/04/2009.

⁶² Klaus Jansen was a chairman of German Association of Police Detectives.

⁶³ The quotes in the text are author's translations from a Bulgarian version of the report published on the web site of the European Council of Police Syndicates. Bund Deutscher Kriminalbeamter Der Bundesvorsitzende, Партньорска проверка: Правосъдие и вътрешни работи. България, 22-24 февруари 2006. Обект на проверката: Борбата с организираната престъпност (Partner inspection: Justice and home affairs, Bulgaria, 22-24 February 2006. Object of inspection: The fight against organised crime) [online] <http://www.cespolice.org/fra/docs/bulgarienbulgsachverstaendigenbericht.pdf> accessed 10/02/2007.

powers in the police, as well as the re-structuring of the prosecution, have all been done to secure organised crime convictions, and have followed recommendations of the European Union. Furthermore, the number of investigating policemen (*doznateli*) who can engage in criminal investigation would be reduced from 10 000 to 2000, following EU recommendations. This, according to the report, could be a problem as, under existing criminal procedure, the investigative policemen have to be physically present at the site of investigation at all times and their small number will lead to work overload. Furthermore, the report found out that these vacancies are not in fact filled and there are 1450 only *doznateli* – there is an age limit of 40 years in an attempt to fill the positions with new people and not so many former employees of the investigation service who have ‘proven their inefficiency’. The low number was already a problem as there are 300 000 investigations per year which means 150 per investigator (and even more now because the vacancies have not been filled). As far as the judicial system is concerned the report noticed some ‘reluctance to put people in prison’.

The report discusses some intriguing facts connected with organised crime in Bulgaria. From 300 000 criminal cases in 2005 only 1080 have been linked to organised crime, i.e. 0.47%. The National Service to Combat Organised Crime (NSCOC) discussed in the previous chapter employs 600 police (of which 15% *doznateli* and 15% analysts, and others are just regular full- or part- time employees). The service works almost exclusively with registered informers. In 2005 it uncovered 233 criminal groups with 1074 members (meaning around 4-5 members per group). As the investigations of organised crime require a lot of resources over a prolonged period of time, the investigations are done under a separate criminal article in the Criminal Code. This is why the organised crime service, as the police had explained, does not investigate the notorious contract killings which are investigated by the regional homicide police departments.⁶⁴

On the other hand, the report points out, NSCOC investigates a widening range of crimes, including cyber crimes and sale of counterfeit goods using a reactive method

⁶⁴ The report mentions an important controversy concerning these killings. According to the EU which used the contract killings as a key evidence that Bulgaria had not achieved success in the fight against organised crime, these killings are 173 for the period between 1992-2005. According to the Bulgarian authorities, they are only 92.

of investigation (after official complaints). As far as drug crimes are concerned Bulgaria is used for trafficking to both Western markets and Middle-Eastern markets (for synthetic drugs). But according to the report the newly acquired investigative techniques are at risk of fast becoming obsolete as the traffickers find new ways to transport drugs. However, the service is well known for successful international operations and in 2005 they engaged in seven, in four of which they used controlled deliveries. The reporter Klaus Jansen was surprised that there were no drugs/money laundering cases and the reason for this is the fact that in Bulgaria most transactions are done in cash and therefore money laundering of drug money cannot be proven. The response he got from the police was that the drugs could be paid for in Istanbul, then they pass through Bulgaria to Western Europe and in such cases the investigation cannot prove anything. As far as illegal arms are concerned, the police estimate is that there were only 80-100 illegal arms sales for 2005, and they have no data of the weapons used in the contract killings. The investigations of the production of counterfeit currency have been quite successful, according to the Bulgarian police and Bulgaria does not currently host any production lines, and is only used for trafficking of counterfeit money.

The NSCOC does not consider women trafficking as a problem because the women are in fact taking advantage of the liberal Western regimes to make their living from prostitution. Most come from very poor backgrounds and most were already prostitutes in Bulgaria and the police are of the opinion that they voluntarily engage in such activity. Nevertheless the Bulgarian authorities are engaged in various programmes against trafficking of women although some of these have had limited positive result. For example, the police quoted the case of a programme to repatriate women (125 in 2005) that did not help because they ended up in the same situation. Finally, according to the data presented in the report international cooperation, which is one of the key activities of the police and NSCOC who were partners of many programmes and frameworks, had resulted in only 19 requests in 2004 and 40 in 2005.

The conclusion of the report poses an intriguing question: 'The new structure of the police [...] seems modern and efficient but would that help the fight against

organised crime?’⁶⁵ According to Klaus Jansen the fact that Bulgaria has ‘mixed and matched’ different good practices in its projects does not mean that the combination will work. The problem with the lack of convictions for any of the contract killings is indicative of the poor record of the police in practice because, as Jansen, points out, this has led to the ‘moral destabilisation of society and that of the police’. As far as the NSCOC is concerned, its main problem Jansen sees in the fact that it ‘acts after the deed and not ahead of it’, meaning that the service is not sufficiently proactive. He shared his disappointment with the visit of the service as he expected to find a lot more enthusiasm and appreciation of the new legislative reforms made to facilitate the fight against organised crime. In response, the police and NSCOC shared their doubts about the merit of these reforms, and complained: ‘The European Union asks us to do this.’⁶⁶

7.6. Accession and Post-accession monitoring

Klaus Jansen’s report on the state of Bulgaria’s law enforcement and criminal justice system, together with the regular monitoring reports, became the basis of the EU’s position to require Bulgaria to do more in the fight against crime and its judicial reform in the period before accession. In the last twelve months before the envisaged (but not confirmed) date for accession of January 2007, Bulgaria was closely monitored and had 15 visits by EU experts monitoring JHA between January and March 2006 only. The EU experts required that the state intensified its crime-fighting and anti-corruption policies and adopted further reforms of the judiciary, including more constitutional changes. In this final stage the pressure was put mainly on judicial reform with the aim of guaranteeing judicial independence and efficiency at the same time.⁶⁷ The EU was directly monitoring the reform and communication

⁶⁵ *Ibid*, p. 27.

⁶⁶ *Ibid*, p.28.

⁶⁷ The reform required more legislative and constitutional changes to secure the full independence of the judiciary from the other branches of power and at the same time, setting limits to the immunity of the judicial staff and more control over appointments and dismissals. This was seen as a way of ensuring better service and less corruption. The efficiency was concerned with the long duration of investigations and trials as the current system allowed the different levels of the investigation process to return the case to the previous level. The proposed changes sought to shorten the duration of trials but risked a lower quality of the investigation and collected evidence. The changes adopted were a compromise and limited the practice of returning the case (mainly by the prosecutors) to a previous level but did not entirely remove the practice.

opinions on the proposed legislative changes.⁶⁸ The reaction of the media was critical of the weakness of Bulgaria's institutions pointing out that it was the judiciary that now conducted the country's foreign policy.⁶⁹

Bulgaria started a process of changing the constitution and adopted a new Penal Code. The police engaged in series of raids on suspicious sites, and increased international cooperation. In addition, the prosecution created a department dealing with organised crime and corruption where the best professionals would work in order to accomplish the national priorities in this area. This was an initiative of the Prosecutor General, who stated: 'I want the prosecution to be more active and this team will work not only on signals from the Ministry of the Interior and Ministry of Finance but also from citizens, media, Bulgarian and foreign businessmen, and seek information on manifestations of organised crime and corruption'.⁷⁰ This was presented to Olli Rehn, the European Commissioner responsible for enlargement at his visit in March 2006. His response was that the EU does not want a 'witch-hunt' but 'convincing results' and 'not just strategies but real actions' which can be achieved within one year and 'should not waste a minute' but get on with the reforms.⁷¹ In his position published in April the judicial reform was not yet satisfactory, and although there have been some structural reforms in the system, the fight against organised crime had to produce a convincing list of achievements, i.e.

⁶⁸ These were monitored by a peer review commission of Justice and Home Affairs experts. The commission refused to make public comments. According to leaks in the Bulgarian media the commission suggested the use of safety clauses in the JHA area in the post-enlargement period even though they are not entitled to propose the use of safety clauses. The commission based this on its criticism of the proposed legislation on the judiciary, giving the right to the Ministry of Justice to control the order, proceeding and duration of trials which was criticised at a point when the project was about to be voted in the Parliament. A letter from Brussels presenting these criticisms allegedly interrupted the voting process. The introduction of a safety clause in the JHA area meant that Bulgarian courts' decisions would not be accepted by the other member states. The main implication of this safety clause was lack of trust in the Bulgarian judicial system but also the possibility for EU companies to impose a more expensive international arbitration for their Bulgarian partners. И. Станев, 'Предпазна клауза на хоризонта' (A safety clause on the horizon), *Капитал*, бр. 12, 16/03/2006, [online] <http://www.capital.bg/show.php?storyid=237464>: accessed 27/04/2007.

⁶⁹ С. Терзиев, 'Настана време съдът да прави външната политика' (We got the point where the court makes our foreign policy), *Сеза*, 7/01/2006 [online] <http://www.segabg.com/online/new/articlenew.asp?issueid=2085§ionId=5&id=0001001>: accessed 25/02/2009.

⁷⁰ 'Седмичната' (Rubric 'This Week'), *Капитал*, 11/03/2006 [online] <http://www.capital.bg/show.php?storyid=236201> accessed 27/04/2007.

⁷¹ 'Интервю: Оли Рен, комисар по разширяването на ЕС / Не искаме лов на вещици, а убедителни резултати' (Interview with Olli Rehn, EU Enlargement Commissioner / We don't want a witch-hunt but convincing results), *Капитал*, бр. 6 11/02/2006 [online] <http://www.capital.bg/show.php?storyid=235008>: accessed 27/04/2007.

investigations and convictions.⁷² As a consequence, the next report on Bulgaria's progress issued in August 2006 criticised mainly the fight against organised crime and required that Bulgaria produced a specific strategy and a plan for this policy by October 2006, which would be evaluated by the Commission in December 2006.⁷³

The mechanism of evaluation of Bulgaria's progress established six benchmarks on which the country had to work. These benchmarks were used by the Commission in the last six months of the pre-accession monitoring and in the established post-accession mechanism for cooperation and verification of the progress of Bulgaria in the area of judicial reform and organised crime. These benchmarks to be addressed by Bulgaria included the need to:

1. Adopt constitutional amendments removing any ambiguity regarding the independence and accountability of the judicial system.
2. Ensure a more transparent and efficient judicial process by adopting and implementing a new Judicial System Act and the new Civil Procedure Code. Report on the impact of these new laws and of the penal and administrative procedure codes, notably on the pre-trial phase.
3. Continue the reform of the judiciary in order to enhance professionalism, accountability and efficiency. Evaluate the impact of this reform and publish the results annually.
4. Conduct and report on professional, non-partisan investigations into allegations of high- level corruption. Report on internal inspections of public institutions and on the publication of assets of high- level officials.

⁷² 'Оценката към 4 април Оли Рен пред комисията по външна политика в Европейския парламент' (The assessment on 4 April. Olli Rehn presentation at the foreign policy commission of the European Parliament), *Kanumal*, бр 14, 07/04/2007 [online] <http://www.capital.bg/show.php?storyid=256162>: accessed 27/04/2007. In response to the lack of information on investigations, the prosecutors pointed out that these are kept in secret and are not publicized until the prosecution decided there is enough evidence to press charges. They also pointed out that organized crime investigations continue for years.

⁷³ The August report did not suggest the use of a safety clause as predicted by experts. However in anticipation of the report the media and politicians in Bulgaria speculated on whether such a clause would be included or not. According to some media reports, the government's opposition was hoping there would be a clause so they could use this to strengthen their position. 'Хроника на един предизвестен доклад. Клауза няма, но има голямо недоверие' (Chronicle of a Report Foretold. No clause but a lot of distrust), *Kanumal*, бр 26, 29/06/2007 [online] <http://www.capital.bg/show.php?storyid=354194>: accessed 16/08/2007.

5. Take further measures to prevent and fight corruption, in particular at the borders and within local government.
6. Implement a strategy to fight organized crime, focusing on serious crime, money laundering as well as on the systematic confiscation of assets of criminals. Report on new and ongoing investigations, indictments and convictions in these areas.⁷⁴

According to Michael Humphreys, head of the European Commission Delegation in Sofia these benchmarks are interlinked in a global strategy against organised crime: the fight against organised crime required an efficient juridical system and the latter requires good laws, etc. However, he also pointed out the conclusion of the latest report on Bulgaria that there is no way of measuring the success of the policy, as there are no reliable statistics. According to the report the benchmark number six the fight against organised crime has a number of achievements but: ‘an evaluation of the impact of the strategy is inconclusive given the absence of a measurement methodology and reliable statistics. Data that would allow the evaluation of the judicial treatment of cases is patchy or inadequate.’⁷⁵ Therefore, as Humphreys argued the main method of measurement would be the number of convictions.⁷⁶

As the Bulgarian authorities were pressured to show results on the fight against organised crime through criminal justice statistics, the latter were presented in a way which matched the priorities of the EU’s fight against organised crime. The data on the finalised legal proceedings linked to organised crime for the period of intensive anti-crime activity 01.10.2006 – 23.02.2007 which were provided for the first post-accession report on the benchmarks showed that there are only 141 convictions for that period on crimes which are commonly understood (if not defined) as organized

⁷⁴ Commission of the European Communities, ‘Commission Decision of 13/XII/2006 establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime’, Brussels, 13/XII/2006, C(2006) 6570 final [online] http://ec.europa.eu/enlargement/pdf/bulgaria/bg_accompanying_measures_1206_en.pdf accessed 12/01/2008.

⁷⁵ European Commission, ‘Key findings of the progress report on the Cooperation and Verification Mechanism with Bulgaria’ MEMO/07/261 Brussels, 27/06/2007 [online] <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/261&format=HTML&aged=0&language=EN&guiLanguage=en> accessed 15/01/2008.

⁷⁶ ‘Хроника на един предизвестен доклад. Клауза няма, но има голямо недоверие’ (Chronicle of a Report Foretold. No clause but a lot of distrust), *op.cit.*

crime thus including even possession of drugs.⁷⁷ Out of this number there are only ten convictions of criminal organizations or of members of organized crime groups (Art. 321); 37 convictions on drug-related crimes (distribution); 10 for car-theft, 7 convictions for financial crimes, 52 for economic crimes. A separate statistical annex was provided for illegal trafficking of drugs where the convictions number 822 but most of these crimes are for possession of drugs and only 36 are for distribution (three for production).⁷⁸ The statistics show the attempt of the authorities to present how varied are the criminal offences that fall under the 'organized crime' benchmark.

In the autumn of 2006 Bulgaria was officially allowed to join the European Union on 1 January 2007 but on the condition that it continued with judicial reform and the fight against organised crime. An elaborate mechanism was set up to monitor the programme in this area and Bulgaria was required to report to the Commission by 31 March of each year on the progress made on the six benchmarks listed above, and '[i]f Bulgaria should fail to address the benchmarks adequately, the Commission may apply safeguard measures based on Articles 37 and 38 of the Act of Accession, including the suspension of member states' obligation to recognise and execute, under the conditions laid down in Community law, Bulgarian judgments and judicial decisions, such as European arrest warrants'.⁷⁹

7.7. Conclusion

In the period between 2000 and 2007 the issue of organised crime had become the most important issue for Bulgaria's internal and foreign policy to the point that

⁷⁷ МВР, 'Приключени досъдебни производства, свързани с организирана престъпност. Решения на прокурора и съда по тях. Обвиняеми и осъдени лица през периода 01.10.2006г. – 23.02.2007г.' (Ministry of the Interior, 'Finalised legal proceedings linked to organised crime. Decisions of the Prosecutor and the courts on these cases. Accused and sentenced persons for the period 01.10.2006 – 23.02.2007') [online] <http://www.mvr.bg/NR/rdonlyres/9794613C-EE70-4E60-9246-030D38539C01/0/Prilojneie6OC.pdf> accessed 15/01/2008.

⁷⁸ МВР, 'Приключени досъдебни производства, за незаконен трафик на наркотични вещества и контрабанда. Решения на прокурора и съда по тях. Обвиняеми и осъдени лица през периода 01.10.2006г. - 23.02.2007г.' (Ministry of the Interior, 'Finalised legal proceedings on illegal trafficking of narcotics and contraband. Decisions of the Prosecutor and the courts on these cases. Accused and sentenced persons for the period 01.10.2006 – 23.02.2007') [online] <http://www.mvr.bg/NR/rdonlyres/924546E0-350A-486B-A9D3C3A7CBA24EDA/0/Prilojenie7drugs.pdf> accessed 15/01/2008.

⁷⁹ Commission of the European Communities, 'Commission Decision of 13/XII/2006', *op.cit.*

Bulgarian accession to the European Union had become equated with the fight against crime and the decriminalisation of the Bulgarian society. The problem of organised crime is usually defined as an internal issue of governance and state and institutional weakness and failure to impose, or be seen as attempting to impose, effective controls over a largely criminalised economy. However the last two chapters have sought to challenge this view and demonstrate the failures of the anti-crime policy as part of a more universal problem of fighting organised crime. They also revealed a number of factors which led to the development and constant re-adjustments of unworkable policies in Bulgaria. Whereas chapter six explained some of the policies' deficiencies with internal issues of implementation, this chapter has exposed the 'structural genesis' of the problems of these policies. The review of the EU evolution in anti-crime demands imposed on Bulgaria between 1997-2007 demonstrated a very chaotic and unclear EU policy which was developed on an ad-hoc basis and did not reflect any EU standards on fighting organised crime (which previous chapters, and particularly chapter four, identified as non-existent) and demonstrated a number of paradoxes and sometimes even prejudices. In these conditions, it is not surprising that Bulgarian institutions could not follow a clear path and engaged in contradictory strategies which led to the problems identified in this and the previous chapter.

The vicious circle came from public and EU pressure on the Bulgarian criminal justice system for results in the fight against organised crime when, in contrast, crime identified by the police remains organised in small groups. Furthermore, the Bulgarian criminal justice system worked on the basis of personal criminal liability and thus breaks down a crime to its constituent elements in order to prove each of them rather than work on an abstract organisational structure. The latter is being planned but is difficult to secure at this stage. It involves special investigation techniques in order to collect information on cases of organised crime and these investigations take years. Therefore the policies aiming to centralise the fight against organised crime have mainly led to more confusion.

The case of Rousse discussed in this chapter confirm these and previous findings concerning the problems created by re-structuring and reforming the criminal justice system on the level of institutions and the attempts to centralise the power over these

institutions for the purpose of a pro-active crime policy. The situation ‘on the ground’ shows that the police have become increasingly agitated with the constant attacks from media, the pressure from above, i.e. the Ministry of the Interior and the EU combined with diminishing possibilities to act such as the need to coordinate investigations with the prosecution, and judges, diminished powers of local police chiefs to dismiss his staff, etc. There is also rivalry between the different branches of the police exemplified by the competition between the regular police and the border police in Rousse. The overall conclusion is that the centralisation of the police justified by the policy on organised crime, defined as a national rather than local phenomenon, has created problems on local levels through decreasing the abilities of the local police but expanding the demands on them to fight crime pro-actively. These problems are then re-produced on a national level and create the impression of inefficiency of the whole criminal justice system. This had led to the ambiguous results of the monitoring process, and Klaus Jansen’s report discussed in the chapter.

It might be argued that a debate of anti-crime policy in any modern society would produce a similar analysis of contradictions and frustrations. There will always be a gap between what people hope of the police and the judiciary and what that can deliver. Provided this gap is not too large this is part of the price of a democratic society. But this is not how the problem was posed in the case discussed here. The development of an organised crime agenda was part of the soft security agenda of international relations, and its incorporation into the EU accession process through the *acquis* required Bulgaria’s police and judiciary to respond to possibly unrealistic expectations based on a questionable analysis. Their capacity to do so satisfactorily then became a test of democratic fitness for membership of an expanded EU with some of the perverse consequences discussed here.

By 2007 the ten-year fight against organised crime in Bulgaria had contributed to a rapidly growing distrust of the Bulgarian voters in the criminal justice institutions. This result was opposite to the initial intention of the international and EU-led anti-crime policy export to weak states. The evidence from Bulgaria shows that it did not achieve its goal of creating good governance by strengthening the internal security institutions and transforming them into providers of security which people trust. A public opinion survey conducted by one of the main agencies in Bulgaria, Alpha

Research, shows that between 2000 and 2007 the public opinion of the police, courts and the prosecution remained or grew more negative.⁸⁰ Furthermore, despite the official information from the police that the level of crime is falling, there is a persistent conviction among the Bulgarian people that organised crime is not defeated but has now become endemic, linked with all levels of government and the judicial institutions. In 2008 the EU suspended its financial transfers to Bulgaria due to allegations of misuse of funds and increased corruption. Thus the wide-ranging and extensive anti-crime and corruption policy of three Bulgarian governments under EU supervision since 1997 continue to seem to have largely failed in their objectives of establishing strong institutions capable of providing security and justice.

⁸⁰ The Bulgarian marketing and social research agency Alpha Research has conducted surveys (face-to-face interviews of the country's adult population of 18+) of the public assessment of the activities of the public institutions since 2000 with some interesting results. The most distrusted institution in Bulgaria is the Law Court, the Prosecution and the Investigation office with around 70-78 percent negative public opinion of those institutions between 2002 and 2008. The police were assessed positively between 2000 and 2006, after which the opinions became mixed and the negative feedback rose sharply towards the end of 2007. The negative opinion of the Parliament rose from about 45 percent 2005 to staggering 88 percent in 2008. The Ministry of the Interior has had mixed feedback but the negative opinions rose towards the end of 2007. The army is the only institution that has been seen in a positively throughout the period although it suffered from some negative feedback in 2008. Alpha Research, Assessment of the Activity of the Public Institutions, 28.04.2009 [online] <http://www.aresearch.org/institutions.html> accessed 20/01/2009.

8. Conclusion

8.1. Introduction

This thesis set out to investigate the implementation of the new soft security agenda and international anti-organised crime policies developed by the European Union since the 1990s. This task led to the exploration of different fields of knowledge and levels of analysis. The topic was approached from the broader perspective of international relations and global politics but was narrowed down through the use of methods from security theory, criminology, history, area studies and policy analysis. This interdisciplinary approach was determined by the research design of the thesis which aimed at looking both at the global and the local conditions of the development of the policy on organised crime during the 1990s and establishing and analysing the relationships between these two levels, and their implications. As stated in the introductory chapter, the thesis sought to uncover the conditions and reasons for the development of this particular international agenda and reach conclusions for areas broader than organised crime and its policies.

The thesis used the case of fighting organised crime in the EU's enlargement conditionality focused on the case of Bulgaria, which was itself explored both at a national and local level. The case of Bulgaria illustrated some problems of top-down policy-making and power inequality which raised serious issues for the quality of governance and democracy in the country. As a direct consequence of increasing demands on Bulgaria to fight organised crime its institutions have had to deal with a growing gap between expectations, external and internal, and the reality of their limited capabilities. Given the amount of resources allocated both by the Bulgarian government and the European Union, the problems created by the obsession with organised crime fighting calls for re-consideration of the theories which inform this policy and its implementation. This concluding chapter explores those issues in more detail and in relation to their broader implications. It reviews the steps taken to deal with this central research question, and then considers the originality of the argument of the thesis and its wider significance.

8.2. Summary of thesis and conclusions by chapter

This thesis was developed in eight chapters, of which six chapters built the core arguments of this work, and the other two, the Introduction and this Conclusion analyse the method and outcome of the research. Chapter two of the thesis *Development of 'New Europe' and the Emergence of Norm Making Accession* discussed the historical process of European integration with a focus on the particular route of development the European Union took after the end of the Cold War. The chapter showed that after several decades of uneven enthusiasm for the European project, in the 1980s European integration seemed to have exhausted its marketability as a basis for cohesion and growth in Europe. The debates about the future of Europe seemed to have reached a standstill between (various) ideas of 'deepening' or 'widening' of the European Communities to an uncertain end. However a number of developments at the end of the 1980s and the beginning of the 1990s gave the project a new impetus. These developments were a combination of increasing economic globalisation and a rising demand for economic de-regulation, the fall of communism in Eastern Europe all of which created possibilities for the re-integration of this region of 'New Europe' to the Western economic and political system, and the EU. As a result the Union took a particular path of development which included *both* deepening and widening. However, both of these paths soon parted with traditional ideas of politics as an area of contest of competing political interests and the EU policy makers came to emphasise new and more *apolitical* normative and ethical lines, in order to promote state cooperation above state competition. This gave priority to a top-down approach in building the EU architecture, and a norm-based accession of the new Eastern European members. One of the new norms for the EU was a new concept of 'soft' security focused on internal safety and regulation in the so-called 'area of freedom, security and justice' which was to be built by the Justice and Home Affairs area of cooperation. Part of this agenda was an international fight against organised crime, identified as one of the threats to 'soft security'.

Chapter three *From Hard Security to Soft Security and the 'Organised Crime Threat'* took a step back towards a theoretical reflection of the reasons why the EU opted for this particular security agenda. It discussed the developments in international

relations theory since the 1980s and especially the 1990s ‘revolution’ in security studies which sought to *deconstruct* the concept of security but along with this process, also opened up a possibility to *reconstruct* security without much change to the concept’s core assumptions but nevertheless divorced security from its political project of *state sovereignty*. The chapter then moved on to challenge the expansion of this new security thinking to areas defined as ‘soft security’. It suggested that the replacement of ‘hard’ threats with ‘soft’ threats such as organised crime has in fact made the security concept more ambiguous and hence open even more to political manipulation, both externally and internally. In order to demonstrate the growing ambiguity of soft security, the second half of the chapter engaged with theories of organised crime drawn from a near-century-long criminological tradition. The review of these theories illustrated the conceptual vagueness of the idea of ‘*organised crime*’, especially if the notion of this type of crime is constructed beyond its local manifestations of small and often *disorganised* criminal associations. The discussion led to the conclusion that the new ideas about transnational organised crime are weakly supported by evidence. Nor is the evidence unambiguous in respect of meaning. Since global rule making is a top-down process, some forms of crime might even be seen as a bottom-up response to the economic imbalance between rich and poor countries. This creates obstacles for any international regime which seeks to suppress crime without addressing its structural conditions and risks worsening the position of the less powerful states.

Chapter four *Organised Crime in Europe and the Emergence of the EU’s Internal Security Governance* looked at the case of the rise of the organised crime discourse in Europe in the 1990s and the EU as a case study of building an international policy to counter this newly identified threat. The chapter engaged with the pre- and post-1990s processes of ‘construction’ of the threat, and discussed the role of EU institutions and national governments in re-defining crime as organised, international and European. The chapter then took a tour back to the historical precedents of international criminal justice cooperation to compare and contrast the 1990s developments with previous initiatives such as Interpol, established in the 1920s, the inclusion of crime in the Council of Europe’s agenda since the 1950s, the setting up of the TREVI group within the European Communities in the 1970s, and the establishment of the Schengen regime for free travel and common border controls in

the 1980s. In comparison to these initiatives, the post-Cold war anti-crime regime built by the EU and a growing number of other international organisations is more impressive but it has encountered many of the problems that the previous attempts also encountered. From this historical perspective, the chapter argues that the anti-crime regime has had a limited success in building formal cooperation between states on fighting crime. This is largely due to the sensitivity of the issue of internal security and its capacity to undermine a core basis of national sovereignty. On a more practical level, a common anti-crime policy within the EU might have entailed the difficult task of reforming its member states the criminal justice systems and bodies of law. As a result the chosen policy focused on the executive branches of the system and legal approximation and mutual recognition of judicial decisions taken in the member states. The core of the policy focused on police re-organisation on national and international level to fight organised and international crime, the development of formal cooperation mechanisms and the establishment of international policing structures such as Europol. The chapter concluded with a discussion of the launching of the external dimension of the EU's anti crime policy, and the use of this policy in relations with non-EU states, and particularly its future members from Central Europe and the Balkans.

Chapter five *Organised Crime and EU Enlargement* moved to the application of the policy outside of the European Union. This was the first of three more empirical chapters which explored the substance of the anti-crime policy application. It first discussed the use of Justice and Home Affairs (JHA) as both a foreign policy instrument, and a tool of member-state building in Eastern Europe, and particularly the Balkans. The chapter then discussed the essence of the policy transfer from the EU to its applicant countries by analysing a sample of EU funded projects on organised crime rated policies within the PHARE programme. The projects fiches described in the chapter revealed some particularities of the EU export of expertise and technical equipment to the applicants to facilitate the institution building around the new organised crime agenda. These project fiches exposed a highly problematic practice of policy transfer without much consideration of local conditions. The disproportionate expenditure on EU experts and EU-made equipment created controversies between donor and recipients, in which the former are bound by the program's requirements and EU membership agenda, and the latter were concerned

with ‘remittance’ of the EU funds, i.e. funding mainly EU-made product and short term but highly paid EU expert visits. In such a situation most of the projects had a questionable institution-building input and mainly supported the spread of the EU anti-crime agenda, rather than developing a genuine institutional capacity on the ground.

Chapter six *Bulgaria: Post-communism and Organised Crime* followed a more complex line of argument and formed a first part of the discussion of the case study for this thesis. It traced the internal development of Bulgaria’s organised crime discourse and identified its origins in the political imperatives of a de-legitimised state in search of new ways to connect with its population. The discourse of organised crime was initiated within the reformist liberal parties in Bulgaria organised within the United Democratic Forces and it was built on an anti-communist agenda which exposed the communist state as criminal and accused the post-communist socialist government of links with the new mafia. This fed into the rise of the organised crime discourse in Western Europe and formed part of the UDF government’s (1997-2001) quest for reform and modernisation of the state and its economy. The government engaged in an expensive criminal justice reform following EU guidelines of legislative changes, institution-building within the police and the judiciary, with a focus on centralisation and specialisation in fighting organised crime. As a result of this the issue of organised crime became a key topic of the public debates in Bulgaria fought in media and linked and the media largely reported information transmitted by criminal justice institutions, EU and foreign observers, and even foreign media. The chapter traced the outcomes of this policy and revealed a growing chaos in Bulgaria’s institutions, development of turf wars, shortage of resources, and a further politicisation of both the executive and judicial branches. The final conclusion of the chapter points out that these problems have nevertheless been largely discursive and in fact indicative of an active but often uncontrollable administrative sector while the democratic connection between this sector and the populace has thinned out.

Chapter seven, *Organised Crime and Bulgaria’s Accession to the EU* discussed the issues of Bulgaria’s anti-crime policy with a focus on the external factors and sought to re-establish responsibility in the wider structural conditions for crime regulation.

The chapter examined the details of the policy of conditionality and monitoring established by the EU to impose its anti-crime agenda on the applicant countries, and especially Bulgaria which was singled out as the applicant state with the most serious organised crime problem. The discussion focused on 2004 to 2006 when Bulgaria was dropped out of the first Eastern European enlargement and was required to intensify its fight against organised crime in order to attain EU compliance. The chapter revealed the lack of consistency in the EU's approach, as well as its reliance on limited evidence and media reports about the crime situation in the country. The EU experts often dismissed, in an imperious fashion, data offered by the Bulgarian institutions, or found its actions, which earlier EU experts had advised, as unsatisfactory. On the other hand the Bulgarian institutions and officials were doing everything possible to convince the EU that Bulgaria was dealing with its organised crime problem. This chapter also looked into a local case of the city of Rousse which had an EU monitoring visit prior to Bulgaria's accession, which demonstrated the gap between expectations and reality, and between the lack of local expertise of the examiners and their reliance for 'hard' data on such issues as number of computers or numbers of trained personnel. This case, as well as the other materials used in this final chapter, has led to the final conclusion about the quality of internal security governance which the EU had developed and exported to its future members.

8.3. Synthesis of main findings

The main finding of this thesis is that behind the new normative and emancipatory rhetoric of 'soft security' the power relations and imbalance between actors on the international but also national level have remained unchanged. Despite the aspiration to overcome old divisions in Europe and build a collaborative union of politically equal states working towards a common security in reality the development of the supranational structures of the EU in the 1990s have legitimised the re-establishment of power politics over equality through defining weak states as failed or failing states and a threat to their own and international security, and the strong states and the European Union as a guard and guardian of security, now based on new principles.

It is generally accepted that the concept of soft security was born out of the efforts to rectify the power politics pre occupation with the strategic-military basis of security,

which developed during the Cold War. The official story of the birth of soft security is the period of post-Cold War enlightenment when states acknowledged the constructed rather than 'natural' nature of threats and the role of interaction in defining identities and interests. The concept of soft security offered a different perspective which claimed to give priority to 'real' threats to human existence and the peaceful structures of society. These threats did not stem from states but the action of individuals or groups of individuals who could or could not be linked to state structures. At the start the nature of soft security was defined primarily in opposition to hard, or military security, because of the strong prevalence of this type of security at the time (the end of the Cold War) and the political strength of the military structures on both a national and international level. The loss of that strength with the end of the Cold War, however, opened new grounds for redefining the nature of security and this time distant threats proved unable to attract enough political support from voters and political parties disenchanted with hard security. At the same time, the discourse (if not the practice of) globalisation and the removal of certain barriers to trade and movement of people pushed the agenda of internal security. In other words, the more the world was becoming global, and the more the state appeared to be weakening as an actor, the more the issue of internal security gained strength.

In this way, the issue of organised crime came to be recognised as a matter of international security in the post-Cold War paradigmatic shift to non-military threats and soft-security concerns. The specific problem in the case of organised crime *is* that it substitutes a vaguely defined threat for a more clearly defined 'hard security' military threat. In particular the discourse of 'organized crime' as a 'security threat' is hard to define: the level of the threat, the exact source of the threat, whose security is threatened, whether the threat is really an 'international security threat' in a meaningful sense. A central problem encountered by international relations/security approaches is the fact that organised crime is by definition an activity performed by non-state actors, and also, that it is not in all cases a necessarily negative function of society. On the other hand, the insufficient empirical research causes additional confusion as to the analysis of the origin and development of the phenomenon and its interpretation as a security threat. Theories of organised crime as a matter of security further complicate the analysis with a number of weak strands such as the ill-defined

referent object of security, incomplete analytical methods that fail to grasp the different forms in which crime manifests itself in various (and all) countries or regions, or is carried out by different sub-state social groups or transnational organisations. The new conceptualizations of security try to avoid the 'statist' approach in traditional security studies. Whereas it is conceivable that a state's capacity to protect its citizens and structure decreased since the end of the Cold War, this argument does not sustain the development of a new normative theory based on the individual and sub-state level of analysis. In reality, this theoretical paradigm is applied by *states* to justify intervention in other *states*, presumed to be less developed and less democratic. It can be argued, however, that such conceptualisations change the very idea of security and promote coercive methods in dealing with issues that may be best solved through different policies.

These problems became evident in the EU's attempt to establish a new international anti-crime regime which was initially limited to the territory of its member states and was justified by the theoretical claim that Europe has become a single area of operation of organised crime. However, it proved difficult to establish working cooperation among the EU member states for many reasons which are usually associated with the concept of national sovereignty. It was also difficult to establish more common roots to the problems of crime in the different states and regions of the Union. Organised crime, or organised criminals, turned out to be more disorganised than initially thought. One area where the EU member states did find common ground, however, was foreign organised crime and this is the main reason why the external dimension of the Justice and Home Affairs agenda could be more vigorously pursued from the mid-1990s. The issue of JHA and organised crime became a hot topic linked to the Union's external relations and the process of enlargement. This is the point where the theory of soft security became even more problematic as it began to target subjects, which were outside the jurisdiction of the EU or its member states. In other words, security risked becoming aggressive and interventionist, rather than defensive and collaborative, and this time its subject was less powerful states. It was not difficult to go down that road because many of these states proved a fruitful ground as they were experiencing the problems of globalisation to a higher degree and many of them were on the brink of political crisis. The issue of internal security helped re-establish the authority of the state and government and gave them an even

stronger validation by linking them to the international level. This was certainly the case for some of the Balkan countries which embraced the crime discourse but for different reasons.

For the EU the application of the Justice and Home Affairs agenda in non-EU states was easy as it did not need to negotiate a consensus between various domestic actors and interests, characteristic of democratic internal policy-making. At times the EU demanded more from the candidate countries than it did from its member states, and these demands grew in scope and stringency. They were defended by two main considerations: first, the fear of possible spill over of criminality from the 'more backward' post-communist states, especially the Balkans; and second, the need to develop stricter enlargement requirements which went beyond the economic and political sphere in order to promote the EU as a new form of normative political organisation. It becomes clear from the empirical research however, that the EU did not in fact have a clear idea of what they were demanding from the applicant countries which opened the way for different interpretations from both sides. For example, a detailed examination of the PHARE projects between EU member states and the applicant countries for dealing with organised crime revealed an amalgamation of goals, purposes, policies and actions that are largely uncoordinated and unsupported by detailed analysis of their crime situation. As a whole, they display a tendency on the part of the EU to mould not only anti-organised crime policy in the applicant countries but also legislation and institutions that have little to do with organised crime but manage to justify funding and fit the overall strategy of *democratisation* and *reform* whose terms were defined as strengthening institutions and their coercive methods instead of strengthening self-rule and accountability.

The general conclusion about the activities and policies dealing with organised crime in the applicant countries, and particularly the case of Bulgaria, explored by the thesis, is that they have framed and addressed organised crime mainly as a problem and a security issue. Organised crime was a subject of increasingly suppressive law and order policies in Bulgaria, which sometimes used even military tactics. The thesis found evidence to suggest that this type of policy has led to further antagonisms in society. As a result Bulgaria experienced an extreme politicisation of crime and its criminal justice institutions. From the perspective of the Bulgarian

voters however, the problem of organised crime was a criticism of the quality of government that extended beyond the security and crime discourse. The perceived failure to manage the crime and corruption problem can be translated into a popular critique of the type of governance, democracy and economy developed after the fall of the communists. Bulgaria is now experiencing a trend of increasing the power of the executive branch and law enforcement at the expense of parliament and the judiciary, which are the traditional agencies of democracy and the rule of law.

This final development serves to show one of the dangers of anti-crime rhetoric. It starts from the point of difficulty to define and measure a problem, securitizing it and excluding other options of dealing with it apart from institutional and mainly suppressive ones, to using it according to the specific needs of local elites. In a way this development in the Balkan states is not different from some Western European examples (such as the UK) where the fight against crime is shaped according to the political realities. In this way, it drifts away from its initial purpose to help strengthen the feeling of security (in Europe). The case of the securitizing European Union is particularly hazardous as it changes completely its initial reason for existence which was to prevent future conflicts in Europe by establishing equality, political and economic, among its counterparts.

8.4. Originality of approach, implications and wider significance

The originality of this thesis lies in its effort to bring together a wide range of disciplines and approaches in its study of crime and its examination of the subject of Bulgarian organised crime from both an internal and external position. Due to the wide spectrum of disciplines covered by the research the thesis' conclusions and wider implications can be relevant to a number of disciplines. From the perspective of the study of crime and crime control, the thesis calls for a re-evaluation of theories which perpetuate the organised crime discourse and sees it as phenomenon which is to be defined and addressed separately from other types of crime. The findings of the thesis call into question such an approach as the policy complications discussed in chapters five, six and seven demonstrate the practical impossibility of defining and containing 'organised crime.' The empirical data collected through the research into the anti-crime policy of the EU and Bulgaria can be used for a better understanding

of the subject and avoiding the opposite approach in which untested theories of crime inform policies. In this way our understanding of the workings of society may be enhanced by a deeper understanding which goes beyond simple explanations such as administrative incapacity. In the concrete case of the international anti-crime policy, the conclusions of the thesis suggest, such simple explanations have led to escalation of wrongly devised policies and a continuous quest for improving unworkable arrangements.

For international relations theory, the findings of the thesis have confirmed some neo-realist assumptions about the continuation of the power structure of the world and primacy of states in the analysis of this structure. However, the thesis depicts a more complicated version of relations in the world system. The most important conclusion from the discussion of anti-crime policies is that they do not demonstrate a clear conception of self-interest. Therefore it is difficult to see the EU policies on crime as an expression of politics – their chaotic nature, lack of clear motive and justification beyond a ‘soft-security’ rhetoric speaks about issues which are deeper than just state-to-state political rivalry in mainstream international relations theory. This raises questions, which the thesis did not address but which may form an interesting line for future enquiry. Such an enquiry could use the issue of the anti-crime policies to explore relations on levels lower than international politics.

The case study of Bulgaria and the European Unions’ adoption of the new soft security agenda has demonstrated that this development has had little security added-value for Bulgaria or the EU. The policies developed and implemented by the Union in Bulgaria have not led to more sense of security in the local population who now fear not a vague threat of military invasion but the weakness of its state institutions. The growing distrust in the criminal justice system in Bulgaria has left its population feeling insecure and unable to seek protection from the state or even identify with its elected representatives. Soft security theory has precluded the critique of security politics in international relations and has replaced one doctrine with another without consideration of the additional implication of undermining the concept of state sovereignty. As a result there is a growing consensus that international security is threatened by weak states which require both ‘hard’ and ‘soft’ internal intervention. Political elites of such states have embraced the agenda and moved to justifying

power with implementing soft security policy *internally* as opposed to hard security *externally*. In this way power has become even more entrenched in its societal basis which has diminished the opportunity for society to challenge through the conventional democratic process.

In the case of Bulgaria, the inclusion of organised crime in the security debates appeared to be modernising the country by linking security with civic concerns but the inadequacies of policies developed under internal and external pressure have led to the turning of organised crime into a powerful tool of critique of post-communism. The implications of this part of the research concerns the study of quality of democracy under conditions of externally defined and devised *democratisation*, i.e. democracy being defined in a Eurocentric manner, focusing on institutions – strong and independent - and thus excluding and ignoring the more important issues of political process and the necessity of this political process to be able to control institutional power. Thus the controversies created by the anti-crime policies are indicative of wider issues with concepts of democracy and the rule of law in post-Cold war state-building. A research agenda focusing on these issues would be of crucial importance for all levels of analysis which the thesis has examined, and would be as relevant for the quality of life of the individual, and the development of the local, the state-level and the international-level communities, and the New Europe, as the issues of security and crime.

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